MISSISSIPPI CODE 1972
Annotated

2021 ADVANCE CODE SERVICE

Pamphlet Number 3
June 2021

This pamphlet updates the 2020 Cumulative Supplement.

Contains statutory changes made during the 2020 Regular Session.

Prepared by the Editorial Staff of the Publisher

LexisNexis

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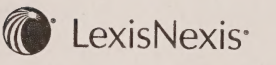

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(Pub.44620)

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PREFACE

Use of Advance Code Service.

The 2021 Advance Code Service ensures that your Mississippi Code of 1972 Annotated is always as current as possible by providing Judicial Decision notes, Attorney General Opinions, Ethics Opinions, research references, and references to law review articles. The ACS may also include changes to statutory provisions, and editorial comments. It ships three times a year, in the period between annual Code supplement pamphlet shipments. Advance Code Service pamphlets are cumulative and may be discarded or recycled upon receipt of later pamphlets.

Format.

Material in the Advance Code Service follows the structure of the Mississippi Code of 1972 Annotated and should be used in conjunction with the Code and its 2020 Supplement.

Annotations.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

In addition, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PREFACE

Information, suggestions, comments, and questions.

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June 2021 LexisNexis

THE CONSTITUTION OF THE STATE OF MISSISSIPPI

Article
5. Executive.
16. Medical Marijuana

ARTICLE 3.

BILL OF RIGHTS.

§ 14. Due process.

JUDICIAL DECISIONS

82. Miscellaneous.

Overwhelming evidence supported a finding of actual impropriety and the appearance of impropriety with respect to an outside individual's contacts with jury members during a product liability case where during remand, that individual had falsely testified and the attorney for the decedents' estates had misrepresented to the trial court that the individual was not a paid consultant for the attorney, and by the time the remand order was issued and discovery was sought and obtained, a significant amount of evidence sought by the automobile manufacturers concerning the individual and the attorney was lost, destroyed, or otherwise unavailable. As a result, there was a taint of unfairness that undermined confidence in the jury verdict. Hyundai Motor Am. v. Applewhite, — So. 3d —, 2021 Miss. LEXIS 61 (Miss. Mar. 11, 2021).

§ 17. Taking property for public use; due compensation.

JUDICIAL DECISIONS

7. Right of eminent domain–In general.

11. — Sewers and drains, right of eminent domain.

Circuit court erred by granting judgment in favor of a city as to a property owner's inverse-condemnation claim because the owner presented evidence raising fact questions as to whether the city's alleged conduct in saving public money before it finally installed a lift pump to stop sewage from entering her home and property resulted in a taking or damaging her property for the public benefit. Williams v. City of Batesville, — So. 3d —, 2021 Miss. LEXIS 69 (Miss. Mar. 18, 2021).

§ 26. Rights of accused; state grand jury proceedings.

JUDICIAL DECISIONS

ANALYSIS

39. Speedy trial – In general.
44. – – Factors considered, speedy trial.
124. Right of accused to be heard.
142. Ineffectiveness of counsel – In general.
159. – – Different result or trial outcome, ineffectiveness of counsel.

39. Speedy trial – In general.

44. – – Factors considered, speedy trial.

Defendant's constitutional right to a speedy trial was not violated because defendant did not assert his right to a speedy trial properly as he only filed a motion to dismiss on the basis that his constitutional right to a speedy trial had been violated; and, although defendant

argued that he actually was prejudiced because the delay allowed for the destruction of the police body-camera footage, defendant's attorney had time to request the body-camera footage before its destruction, and defendant failed to provide any proof that the footage actually contained exculpatory evidence.Kelly v. State, 305 So. 3d 1134, 2020 Miss. LEXIS 444 (Miss. 2020).

124. Right of accused to be heard.

Defendant was not denied the right to testify in defendant's own defense because the record did not demonstrate that defendant ever made defendant's desire to testify known to the trial court even after the court told defendant that defendant could, contrary to the advice of counsel.Ferguson v. State, 298 So. 3d 1030, 2019 Miss. App. LEXIS 600 (Miss. Ct. App. 2019), cert. denied, 299 So. 3d 793, 2020 Miss. LEXIS 311 (Miss. 2020).

142. Ineffectiveness of counsel – In general.

159. – – Different result or trial outcome, ineffectiveness of counsel.

Although defendant's trial counsel was deficient in moving ore tenus for judgment notwithstanding the verdict, but not making a post-trial motion for a new trial, defendant was not prejudiced by that omission because the verdicts were not contrary to the overwhelming weight of the evidence in that the victims identified defendant as the perpetrator of armed robbery and kidnaping and defendant admitted that defendant was near the crime scene at the time of the incident.Ivory v. State, 283 So. 3d 108, 2019 Miss. LEXIS 336 (Miss. 2019).

ARTICLE 4.

LEGISLATIVE DEPARTMENT.

RULES OF PROCEDURE

§ 73. Veto of parts of appropriations bill.

JUDICIAL DECISIONS

3. Parts of bills subject to veto.

Governor's partial veto of House Bill 1782 comported withMiss. Const. art. 4, § 73, where under the House Bill, the monies were appropriated to multiple, distinct, and separate entities, thus they were multiple separate appropriations as expounded upon in case law. The Governor's partial veto struck two appropriations. The removal of those appropriations did not affect any other appropriations in the bill-.Reeves v. Gunn, 307 So. 3d 436, 2020 Miss. LEXIS 508 (Miss. 2020).

ARTICLE 5.

EXECUTIVE.

Sec.

140. Election of Governor.
141. Repealed.
142. Repealed.
143. Repealed.

§ 140. Election of Governor.

The Governor of the state and all statewide elected officials shall be elected by the people in a general election to be held: on the first Tuesday after the first Monday of November 2023, and on the first Tuesday after the first Monday of November in every fourth year thereafter. The person receiving a majority of

the number of votes cast in the election for these offices shall be declared elected. If no person receives a majority of the votes, then a runoff election shall be held under procedures prescribed by the Legislature in general law.

HISTORY: 1817 art IV § 2; 1832 art V § 2; 1869 art V § 2; Laws, 1982, ch. 621, eff January 28, 1983; Laws, 2020, ch. 2021, § I, eff March 29, 2021.

Editor's Note — The 2020 amendment to Section 140 of the Constitution was proposed by Chapter 2021, Laws of 2020 (House Concurrent Resolution No 47), and upon ratification by the electorate on November 3, 2020, was inserted as a part of the Constitution by proclamation of the Secretary of State on March 29, 2021.

Amendment Notes — The 2020 amendment rewrote the section to remove the requirement that a candidate for governor or statewide elected office receive the most votes in a majority of the state's House districts (the electoral vote requirement).

§ 141. Repealed.

Repealed by Laws of 2020, ch. 2021, § II, eff March 29, 2021.

Editor's Note — Former § 141 required the House of Representatives to choose a governor from the two candidates who received the highest number of popular votes in the absence of electoral and popular vote majorities.

The repeal of Section 141 of the Constitution was proposed by Chapter 2021, Laws of 2020 (House Concurrent Resolution No 47), and upon ratification by the electorate on November 3, 2020, was deleted from the Constitution by proclamation of the Secretary of State on March 29, 2021.

§ 142. Repealed.

Repealed by Laws of 2020, ch. 2021, § III, eff March 29, 2021.

Editor's Note — Former § 142 prohibited Legislators from receiving certain appointments from the Governor or any state officer if the Governor or state officer had been elected by the House of Representatives.

The repeal of Section 142 of the Constitution was proposed by Chapter 2021, Laws of 2020 (House Concurrent Resolution No 47), and upon ratification by the electorate on November 3, 2020, was deleted from the Constitution by proclamation of the Secretary of State on March 29, 2021.

§ 143. Repealed.

Repealed by Laws of 2020, ch. 2021, § IV, eff March 29, 2021.

Editor's Note — Former § 143 provided that all other state officers would be elected at the same time, and in the same manner as provided for election of Governor.

The repeal of Section 143 of Article 5 of the Mississippi Constitution of 1890 was proposed by Laws of 2020, Chapter 2021 (House Concurrent Resolution No. 47), which was ratified by the electorate on November 3, 2020.

ARTICLE 12.

FRANCHISE.

§ 241. Qualifications for electors.

JUDICIAL DECISIONS

1. Constitutionality.

Miss. Const. art. XII, § 241, a disenfranchisement provision, does not violate the Fourteenth Amendment to the U.S. Constitution. Harness v. Hosemann, 988 F.3d 818, 2021 U.S. App. LEXIS 5354 (5th Cir. Miss. 2021).

ARTICLE 16.

MEDICAL MARIJUANA

Sec.

288.1. Purpose of Article.
288.2. Criminal and Civil Immunity.
288.3. Limitations of Article; Prohibition on Smoking in Public.
288.4. Definitions.
288.5. Rules and Regulations; Fees; Identification Cards; Fines and Sanctions.
288.6. Assessment of Sales Tax; Special Fund in Treasury; Personnel Positions; Line of Credit.
288.7. Identification Cards; Immunity from Sanctions.
288.8. Limitations on Amount of Marijuana; Dispensed only by Treatment Centers; Contracts Enforceable; Location of Centers; Zoning Restrictions.
288.9. Reports to Legislature.
288.10. Severability of Article.

§ 288.1. Purpose of Article.

The purpose of this article is to ensure the availability of and safe access to medical marijuana for qualified persons with debilitating medical conditions.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

However, on May 14, 2021, the Mississippi Supreme Court ruled in *In re Initiative Measure No. 65 v. Watson*, 2021 Miss. LEXIS 123 that the petition submitted to the Secretary of State seeking to place Initiative 65 on the ballot for the November 3, 2020, general election was insufficient. Because Initiative 65 was placed on the ballot without meeting Article 15, § 273(3) prerequisites, it was in violation of the Mississippi Constitution, and the court reversed the Secretary of State's certification of the initiative and voided any subsequent proceedings on it.

§ 288.2. Criminal and Civil Immunity.

(1) Except as otherwise provided for in this article, a qualified patient or caregiver shall not be subject to criminal or civil sanctions for the use of medical marijuana, obtained from a medical marijuana treatment center, for a debilitating medical condition.

(2) Except as otherwise provided for in this article, a physician shall not be subject to criminal or civil sanctions solely for issuing a physician certification to a person diagnosed with a debilitating medical condition.

(3) Except as otherwise provided for in this article, a medical marijuana treatment center and its officers, owners, operators, employees, contractors, and agents shall not be subject to criminal or civil sanctions for processing medical marijuana in compliance with regulations prescribed by the department.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

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§ 288.3. Limitations of Article; Prohibition on Smoking in Public.

(1) Except as otherwise provided for in this article, nothing in this article shall:

(a) Affect or repeal laws relating to the use of marijuana that is not intended for use for a debilitating medical condition.

(b) Authorize the use of medical marijuana for anyone other than a qualified patient, and, where authorized by this chapter, for caregivers and officers, owners, operators, employees, contractors, and agents of treatment centers.

(c) Permit a person to operate any motor vehicle, aircraft, train, or boat while consuming or impaired by medical marijuana.

(d) Require accommodation for the use of medical marijuana or require any on-site use of medical marijuana in any public or private correctional institution, detention facility, or place of education, or employment.

(e) Require any health insurance provider or any government agency or

authority to reimburse any person for expenses related to the use of medical marijuana.

(f) Override any public laws, ordinances, regulations, or rules or any private rules, regulations, or provisions related to smoking in or on public or private places.

(g) Affect any existing drug testing laws, regulations, or rules.

(2) It is unlawful for any person to smoke medical marijuana in a public place. Any person who violates this subsection may, upon conviction, be punished by a fine of not more than One Hundred Dollars ($100.00).

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

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§ 288.4. Definitions.

For purposes of this article, the following terms shall have the following meanings:

(1) **"Caregiver"** shall mean a person who is at least twenty one (21) years of age, who complies with the regulations prescribed by the department, and who assists with a qualified patient's use of medical marijuana. The department may limit the number of qualified patients a caregiver may assist at any one time. A qualified patient may have more than one caregiver. A caregiver is prohibited from consuming medical marijuana provided for use by a qualified patient.

(2) **"Criminal or civil sanctions"** shall mean arrest; incarceration; prosecution; penalty; fine; sanction; the denial of any right, privilege, license, certification; and/or to be subject to disciplinary action by a licensing board or commission; and/or to be subject to seizure and/or forfeiture of assets pursuant to any Mississippi law, local ordinance, or board, commission, or agency regulation or rule.

(3) **"Debilitating medical condition"** shall mean cancer, epilepsy or other seizures, Parkinson's disease, Huntington's disease, muscular dystrophy, multiple sclerosis, cachexia, post-traumatic stress disorder, positive status for human immunodeficiency virus, acquired immune deficiency

syndrome, chronic or debilitating pain, amyotrophic lateral sclerosis, glaucoma, agitation of dementias, Crohn's disease, ulcerative colitis, sickle-cell anemia, autism with aggressive or self-injurious behaviors, pain refractory to appropriate opioid management, spinal cord disease or severe injury, intractable nausea, severe muscle spasticity, or another medical condition of the same kind or class to those herein enumerated and for which a physician believes the benefits of using medical marijuana would reasonably outweigh potential health risks.

(4) **"Department"** shall mean the Mississippi State Department of Health or its successor agency.

(5) **"Medical marijuana"** shall have the meanings given as of July 1, 2018 in Section 41-29105(r) and/or Section 41-29-105(0), of the Mississippi Code of 1972, and which is used to treat the symptoms and/or effects of a debilitating medical condition as provided for in this article.

(6) **"Medical marijuana identification card"** shall mean a document, prescribed by and issued by the department, which identifies a person as a qualified patient or caregiver or officer, owner, operator, employee, contractor, or agent of a medical marijuana treatment center.

(7) **"Medical marijuana treatment center"** shall mean an entity that is registered with and licensed and regulated by the department and that processes medical marijuana, related supplies, and/or educational materials. A treatment center may engage in one or more of the activities involved in the processing of medical marijuana.

(8) **"Physician"** shall mean a person with a valid Doctor of Medicine or Doctor of Osteopathic Medicine degree and who holds an unrestricted license to practice medicine in the state of Mississippi by the Mississippi Board of Medical Licensure, or its successor agency.

(9) **"Physician certification"** shall mean a form approved by the department, signed and dated by a physician, certifying that a person suffers from a debilitating medical condition for which the use of medical marijuana may mitigate the symptoms and/or effects. The certification shall remain current for twelve months, unless the physician specifies a shorter period of time, and shall be issued only after an in-person examination of the patient in Mississippi. A certification shall only be issued on behalf of a minor when the minor's parent or guardian is present and provides signed consent. Nothing herein shall require a physician to issue a certification.

(10) **"Process"** shall mean to acquire, administer, compound, convert, cultivate, deliver, develop, disburse, dispense, distribute, grow, harvest, manufacture, package, possess, prepare, process, produce, propagate, research, sell, test, transport, or transfer medical marijuana or any related products such as foods, tinctures, aerosols, oils, or ointments.

(11) **"Qualified patient"** shall mean a person who has been diagnosed with a debilitating medical condition and who has been issued a physician certification.

(12) **"Use"** shall mean the acquisition, possession, preparation, use or use with an accessory, delivery, transfer, or administration of medical

marijuana by a qualified patient or caregiver. For purposes of this chapter, "accessory" shall have the meaning given in Section 41-29-105(v) of the Mississippi Code of 1972, as of July 1, 2018.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

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§ 288.5. Rules and Regulations; Fees; Identification Cards; Fines and Sanctions.

(1) The department shall implement, administer, and enforce the provisions of this article and shall issue reasonable rules and regulations, pursuant to the Mississippi Administrative Procedures Act, in the discharge of its responsibilities.

(2) The department shall prescribe reasonable rules and regulations pursuant to this section that shall include, but not be limited to, tracking and labelling of medical marijuana; qualifications for and safe and secure processing of medical marijuana by medical marijuana treatment centers; restrictions on advertising and marketing; issuance of medical marijuana identification cards; standards for testing facilities; use of medical marijuana in nursing homes, hospices, and assisted living facilities; reciprocal agreements with other states for patients registered in medical marijuana programs; qualifications of and limitations on caregivers and officers, owners, operators, employees, contractors, and agents of treatment centers; implementation and operation of a statewide data base system to support the utilization of identification cards; and penalties for violations of this article.

(3) The rules and regulations may include a reasonable fee of up to Fifty Dollars ($50.00) for issuing an identification card and reasonable fees for licensing treatment centers, which shall be fixed by and paid to the department, pursuant to Section 288.6.

(4) The rules and regulations shall not limit the number of licensed medical marijuana treatment centers nor set the price of medical marijuana.

(5) The rules and regulations shall require the department to issue an identification card or a license for a treatment center within a reasonable time following an application for a card or license.

(6) The department shall issue a qualified patient a medical marijuana identification card upon presentation of a physician certification. Such card shall be renewed, as applicable, upon presentation of a new physician certification, but in no case shall a card have an expiration term longer than twelve (12) months. A qualified patient is authorized to receive medical marijuana from a treatment center upon presentation of his or her identification card.

(7) The department and medical marijuana treatment centers shall protect the confidentiality of all qualified patients. All records containing the identity of qualified patients, caregivers, and physicians shall be confidential and exempt from disclosure under the Mississippi Public Records Act or any related statute, regulation, or rule pertaining to the public disclosure of records.

(8) The department may establish an advisory committee to assist the department in the promulgation of rules and regulations and the regulation and enforcement of the provisions of this article.

(9) The department shall adopt final rules and regulations pursuant to this article no later than July 1, 2021. The department shall begin issuing identification cards and treatment center licenses no later than August 15, 2021.

(10) To ensure timely implementation of this chapter for qualified patients, and only for activities associated with implementation and operation, the department is exempt from the Mississippi Department of Information Technology Services laws, rules, and regulations for any information technology procurements made up to Two Hundred Fifty Thousand Dollars ($250,000) for two years from the effective date of this chapter. This exemption shall not apply to any reporting requirements.

(11) The department is authorized to adopt and levy administrative fines to enforce the provisions of this article. Payment of any fines shall be deposited in the special fund created by Section 288.6.

(12) The department is authorized to adopt and levy the following sanctions, singly or in combination, when it finds an applicant or licensee has committed any violation of this article or department rules or regulations: revoke or suspend a license, censure a licensee, impose a fine in an amount not to exceed Five Thousand Dollars ($5,000) for the first violation and an amount not to exceed Twenty Five Thousand Dollars ($25,000) for each subsequent violation, place a licensee on a probationary status, require the licensee to file regular reports and submit to reasonable requirements and restrictions, revoke probationary status of a licensee and impose other authorized sanctions, and refuse to issue or renew a license, restrict a license, or accept a voluntary surrendering of a license. The department is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements of a licensee. The notice and hearing requirements and judicial review provisions contained in Section 43-11-11 of the Mississippi Code of 1972, as of July 1, 2018, shall apply to the denial, suspension, or revocation of a license.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

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§ 288.6. Assessment of Sales Tax; Special Fund in Treasury; Personnel Positions; Line of Credit.

In addition to the fees applied to issuing identification cards and licensing medical marijuana treatment centers, the department may assess up to the equivalent of the state's sales tax rate to the final sale of medical marijuana. Revenue generated under this section or through the issuance of identification cards or the licensing of medical marijuana treatment centers shall pay for the costs incurred by the department in implementing and enforcing the provisions of this article and shall be deposited into a special fund in the state treasury to be expended by the department without prior appropriation or authorization. The department shall administer the fund and make expenditures from the fund for costs or other services or programs associated with this article. Fund balances shall not revert to the General Fund. The department shall have the authority to utilize these special funds to escalate personnel positions in the department where needed, as non-state-service, to administer and enforce the provisions of this article. Upon request of the department, the State Treasurer shall provide a line of credit from the Working Cash Stabilization Fund or any other available special source funds maintained in the state treasury in an amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000), for deposit to this special fund to provide sufficient working cash to implement the provisions of this article. Any such loans shall be repaid from the available funds received by the department under this article.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his

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§ 288.7. Identification Cards; Immunity from Sanctions.

A medical marijuana identification card issued pursuant to this article shall serve to identify a person as a qualified patient or caregiver or officer, owner, operator, employee, contractor, or agent of a medical marijuana treatment center and thus exempt such person from criminal or civil sanctions for the conduct authorized by this article.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

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§ 288.8. Limitations on Amount of Marijuana; Dispensed only by Treatment Centers; Contracts Enforceable; Location of Centers; Zoning Restrictions.

(1) Medical marijuana treatment centers shall not provide to a qualified patient, during any one fourteen-day period, an amount of medical marijuana that exceeds 2.5 ounces by weight. At no one time shall a qualified patient possess more than 2.5 ounces of medical marijuana. The weight limitation herein shall not include any ingredients combined with medical marijuana to prepare edible products, topical products, ointments, oils, tinctures, or other products.

(2) Medical marijuana shall only be dispensed to a qualified patient or caregiver with a current medical marijuana identification card by a medical marijuana treatment center.

(3) All contracts under this article and related to the operation of medical marijuana treatment centers shall be enforceable and rules applicable to other similar businesses by the Department of Revenue shall apply to medical marijuana treatment centers created pursuant to this article, except that the processing and use of medical marijuana shall be exempt from the application of any state and/or local sales tax or other fee, other than that authorized by this article.

(4) No medical marijuana treatment center shall be located within five hundred (500) feet of a pre-existing school, church, or licensed child care center.

(5) Except as otherwise provided in this article, any zoning ordinances, regulations and/or provisions of a municipality or county shall be consistent with Section 288.6 and shall not impair the availability of and reasonable access to medical marijuana. Zoning provisions applicable to retail dispensaries shall be no more restrictive than those for a licensed retail pharmacy and zoning provisions applicable to other businesses that fall within the definition of medical marijuana treatment centers shall be no more restrictive than other comparably sized and staffed lawful commercial or industrial businesses.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

However, on May 14, 2021, the Mississippi Supreme Court ruled in *In re Initiative Measure No. 65 v. Watson*, 2021 Miss. LEXIS 123 that the petition submitted to the Secretary of State seeking to place Initiative 65 on the ballot for the November 3, 2020, general election was insufficient. Because Initiative 65 was placed on the ballot without meeting Article 15, § 273(3) prerequisites, it was in violation of the Mississippi Constitution, and the court reversed the Secretary of State's certification of the initiative and voided any subsequent proceedings on it.

§ 288.9. Reports to Legislature.

No later than two years from the implementation of this article, and every two years thereafter, the department shall provide to the Legislature a comprehensive public report of the operation of this article.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the

Secretary of State on March 29, 2021.

However, on May 14, 2021, the Mississippi Supreme Court ruled in *In re Initiative Measure No. 65 v. Watson*, 2021 Miss. LEXIS 123 that the petition submitted to the Secretary of State seeking to place Initiative 65 on the ballot for the November 3, 2020, general election was insufficient. Because Initiative 65 was placed on the ballot without meeting Article 15, § 273(3) prerequisites, it was in violation of the Mississippi Constitution, and the court reversed the Secretary of State's certification of the initiative and voided any subsequent proceedings on it.

§ 288.10. Severability of Article.

The provisions of this article are declared to be severable, and if any provision, word, phrase, or clause of this article or the application thereof shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this article.

HISTORY: See Editor's Note.

Editor's Note — Article 15, Section 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. Initiative 65 was approved by the electors on November 3, 2020, and the Secretary of State certified the election results on December 3, 2020. Pursuant to his authority under Section 23-17-42, the Secretary of State inserted Initiative 65 into the Constitution as Article 16, Sections 288.1 through 288.10 by proclamation of the Secretary of State on March 29, 2021.

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TITLE 11.

CIVIL PRACTICE AND PROCEDURE

CHAPTER 7.

PRACTICE AND PROCEDURE IN CIRCUIT COURTS

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS

§ 11-7-303. Filing copy of foreign judgment; enforcement.

JUDICIAL DECISIONS

3. Time limitation.

Claimant's causes of action seeking to enforce a foreign judgment were time-barred under the applicable statutes of limitation because the claimant did not file the complaint within seven years of the foreign judgment. Furthermore, enrolling a foreign judgment did not reset the applicable statute of limitations period. Coleman v. WGST, LLC, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

§ 11-7-305. Affidavit of filing; notice; execution.

JUDICIAL DECISIONS

1. In general.

Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment as foreign judgment creditor's claims were tolled. Coleman v. WGST, LLC, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

CHAPTER 11.

VENUE OF ACTIONS

IN GENERAL

§ 11-11-3. County in which to commence civil actions; dismissal of actions more properly heard in another forum; transfer of action to proper county; factors determining grant of motion to dismiss or transfer.

JUDICIAL DECISIONS

3. Jurisdiction.

Circuit court did not have jurisdiction to consider petitioner's motion seeking judicial review of the Mississippi Department of Corrections' decision denying his request for credit for time served in another county because the motion should have been filed in the county where petitioner was incarcerated at the time he requested relief. McManus v. State, 310 So. 3d 332, 2021 Miss. App. LEXIS 11 (Miss. Ct. App. 2021).

CHAPTER 15.

ARBITRATION AND AWARD

IN GENERAL

§ 11-15-23. Vacation of award; grounds.

JUDICIAL DECISIONS

1. In general.

Borrower was not entitled to reinstate the borrower's case against a bank to the circuit court's active docket after the case was submitted to arbitration, based on the agreement of the parties, and the arbitration was terminated when the borrower failed to pay required arbitration fees because the borrower failed to establish any statutory ground to vacate the arbitration award. White v. Cmty. Bancshares of Miss., 310 So. 3d 842, 2021 Miss. App. LEXIS 29 (Miss. Ct. App. 2021).

ARBITRATION OF CONTROVERSIES ARISING FROM CONSTRUCTION CONTRACTS AND RELATED AGREEMENTS

§ 11-15-133. Vacating arbitration award.

JUDICIAL DECISIONS

3. Modification.

Circuit court erred in modifying a judgment over a year after it confirmed an arbitration award to release a contractor from the judgment because there was no "evident mistake" apparent from the four corners of the arbitration award that warranted modification, and the court exceeded its jurisdiction by entertaining new arguments and entering into a fact-finding phase as to the identity of the "proper" defendant where the award itself clearly set out who was subject to the judgment, and since doing business under another name (d/b/a) did not create an entity distinct from the person operating the business, and there was no legal distinction between the two names. Hartzler v. Bosarge, — So. 3d —, 2021 Miss. App. LEXIS 117 (Miss. Ct. App. Mar. 16, 2021).

CHAPTER 37.

REPLEVIN

§ 11-37-101. How replevin commenced; immediate seizure of property sought.

JUDICIAL DECISIONS

1. In general.

Return of purported property owner's property was ordered because the trial court found that the testimony of the owner and the owner's friend that the owner stored the property in the trailer of the owner's former paramour and that the paramour was to return the property to the owner was more credible than the paramour's claim that the owner had given the paramour the items as gifts. At no point did the paramour raise an objection to a corrected list of the items on the basis that the list failed to include

specific values for each item. Massey v. Neely, 309 So. 3d 138, 2021 Miss. App. LEXIS 25 (Miss. Ct. App. 2021).

CHAPTER 41.

MANDAMUS; PROHIBITION

§ 11-41-1. In what cases a remedy and how obtained.

JUDICIAL DECISIONS

1. In general.

Chancery court's order transferring petition for writ of mandamus showed that the only directive to the circuit court was to address the mandamus petition, in which the citizen requested that the sheriff be compelled to execute process on defendants in the citizen's public records action already pending in the chancery court; the circuit court had jurisdiction as to this issue pursuant to state law. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

Circuit court abused its discretion in dismissing the citizen's mandamus petition and failing to compel the sheriff to execute process on public officials named as defendants in the citizen's public records action; the citizen had standing to seek mandamus and had a right to relief as he properly sought service of process, the sheriff was required by law to execute process, and the citizen had no other adequate remedy at law. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

CHAPTER 46.

IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES

§ 11-46-1. Definitions.

JUDICIAL DECISIONS

9. Miscellaneous.

Circuit court abused its discretion by implicitly allowing a volunteer firefighter to amend his answer when it granted his motion for summary judgment based upon a qualified immunity defense because he waived the defense; the firefighter never raised a qualified immunity affirmative defense until he sought summary judgment on that basis fourteen months after he filed his answer, he actively participated in the litigation process, and no extreme and unusual circumstances warranted his delay. Cook v. Taylor, — So. 3d —, 2021 Miss. App. LEXIS 81 (Miss. Ct. App. Feb. 22, 2021).

§ 11-46-3. Declaration of legislative intent.

JUDICIAL DECISIONS

11. Illustrative cases.

Because a property owner could be able to prove a set of facts under the Mississippi Tort Claims Act for actions by a city that were not exempt from immunity, the circuit court erred by dismissing the owner's claims of basic negligence; a genuine issue remained as to whether the city exercised ordinary care in exploring every feasible alternative it could before spending the money necessary to install

a lift station. Williams v. City of Batesville, — So. 3d —, 2021 Miss. LEXIS 69 (Miss. Mar. 18, 2021).

§ 11-46-5. Waiver of immunity; course and scope of employment; presumptions.

JUDICIAL DECISIONS

8. Immunity.

Because a property owner could be able to prove a set of facts under the Mississippi Tort Claims Act for actions by a city that were not exempt from immunity, the circuit court erred by dismissing the owner's claims of basic negligence; a genuine issue remained as to whether the city exercised ordinary care in exploring every feasible alternative it could before spending the money necessary to install a lift station. Williams v. City of Batesville, — So. 3d —, 2021 Miss. LEXIS 69 (Miss. Mar. 18, 2021).

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
8. Police or fire protection.
9. Immunity.
10. Waiver of immunity.
11. Illustrative cases.

1. In general.

Children of decedent failed to raise any genuine issue of material fact that a police officer turning on his blue lights and making a U-turn in order to stop a vehicle proceeding in a reckless and dangerous manner, less than 30 seconds before the speeding vehicle crashed, constituted reckless disregard for public safety. Smith v. City of Southaven, Miss., 308 So. 3d 456, 2020 Miss. App. LEXIS 662 (Miss. Ct. App. 2020).

8. Police or fire protection.

Trial judge did not err in finding that a county was immune from liability because substantial evidence supported the judge's finding that an automobile accident victim failed to prove that a deputy sheriff acted in reckless disregard of the safety and well-being of others. The judge reasonably found that the deputy activated the lights and siren on the deputy's patrol car, accelerated to a high speed, and successfully passed slow-moving vehicles en route to a medical emergency when another motorist negligently drove into the deputy's car. McKay v. Choctaw Cty., 312 So. 3d 404, 2021 Miss. App. LEXIS 76 (Miss. Ct. App. 2021).

9. Immunity.

Automobile accident victim's claims in a negligence action against a county were barred by the weather exception when the victim sustained injuries as the victim drove a vehicle across a washout on a county road because county was immune for any breach of a duty to warn of the washout as the accident was caused solely by the effect on the use of streets and highways of a significant rain event that occurred. Smith v. Pike Cty., 312 So. 3d 731, 2021 Miss. App. LEXIS 71 (Miss. Ct. App. 2021).

10. Waiver of immunity.

Circuit court abused its discretion by implicitly allowing a volunteer firefighter to amend his answer when it granted his motion for summary judgment based upon a qualified immunity defense because he waived the defense; the firefighter never raised a qualified immunity affirmative defense until he sought summary judgment on that basis fourteen months after he filed his answer, he actively participated in the litigation process, and no extreme and unusual circumstances warranted his delay. Cook v. Taylor, — So. 3d —, 2021 Miss. App. LEXIS 81 (Miss. Ct. App. Feb. 22, 2021).

11. Illustrative cases.

Because a property owner could be able to prove a set of facts under the Mississippi Tort Claims Act for actions by a city that were not exempt from immunity, the circuit court erred by dismissing the owner's claims of basic negligence; a genuine issue remained as to

whether the city exercised ordinary care in exploring every feasible alternative it could before spending the money necessary to install a lift station. Williams v. City of Batesville, — So. 3d —, 2021 Miss. LEXIS 69 (Miss. Mar. 18, 2021).

CHAPTER 51.

APPEALS

§ 11-51-75. Appeal to circuit court from decision of a local governing authority.

JUDICIAL DECISIONS

1. In general.

Appellant's due process claims relieved him of the statute's requirement that he first appeal the city council's permit decision within 10 days. Wheelan v. City of Gautier, — So. 3d —, 2021 Miss. App. LEXIS 78 (Miss. Ct. App. Feb. 23, 2021).

TITLE 13.

EVIDENCE, PROCESS AND JURIES

CHAPTER 1.

EVIDENCE

IN GENERAL

§ 13-1-23. Presumption of death.

JUDICIAL DECISIONS

4. Rebuttal of presumption.

Chancery court properly denied a daughter's petition for the presumption of death of her father because the father had not been absent from or concealed himself in the state for seven years successively without being heard of since the record reflected that, while the father changed his name to "Morningstar" approximately three years earlier, his residence and his social security number remained the same, he was present at the hearing and testified, there was no indication in the record that the daughter attempted or requested to rebut Morningstar's testimony and was denied, she failed to explain what evidence disappeared or was defaced, and failed to explain how the chancery clerk's alleged actions prejudiced her case. In re Johnson, 312 So. 3d 709, 2021 Miss. LEXIS 2 (Miss. 2021).

CHAPTER 3.

PROCESS, NOTICE, AND PUBLICATION

§ 13-3-5. The summons.

JUDICIAL DECISIONS

1. In general.

Circuit court should have dismissed the complaint because the summons failed to substantially comply with the form required by subsection (b); although it did appear that an attorney, the defendant, could have had actual notice of the complaint sufficient to answer it, actual knowledge by a defendant of the pendency of a suit against him or hr was immaterial, unless there had been a legal summons or a legal appearance. Webster v. Fannings, 311 So. 3d 1157, 2021 Miss. LEXIS 37 (Miss. 2021).

TITLE 15.

LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1.

LIMITATION OF ACTIONS

§ 15-1-21. Actions on mortgages, deeds of trust, and statutory liens to be brought within time allowed for action upon writing in which debt is specified.

JUDICIAL DECISIONS

1. In general.

Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment. Coleman v. WGST, LLC, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

§ 15-1-35. Limitations applicable to actions for certain torts.

JUDICIAL DECISIONS

ANALYSIS

2. Applicability.
10. Intentional infliction of emotional distress.

2. Applicability.

Circuit court was correct in allowing an insured's abuse of process and intentional infliction of emotional distress claims to proceed because the actions at issue did not fall within the specific subjects expressed within Miss. Code Ann. § 15-1-35 but fit comfortably within the general clause expressed by Miss. Code Ann. § 15-1-49; the insured's action was timely because it was filed well-within by the three-year statute of limitations established by § 15-1-49. Geico Cas. Co. v. Stapleton, — So. 3d —, 2021 Miss. LEXIS 100 (Miss. Apr. 15, 2021).

10. Intentional infliction of emotional distress.

Supreme court overrules Jones v. Fluor Daniel Services Corp., 32 So. 3d 417 (Miss. 2010), because it judicially expanded the one-year statute of limitations in Miss. Code Ann. § 15-1-35 to include torts beyond the ones chosen by the Legislature and return to the supreme court's original interpretation as stated in Norman v. Bucklew, 684 So. 2d 1246, 1256 (Miss. 1996); intentional and/or negligent infliction of emotional distress claims are governed by the three-year statute of limitations. Geico Cas. Co. v. Stapleton, — So. 3d —, 2021 Miss. LEXIS 100 (Miss. Apr. 15, 2021).

§ 15-1-43. Limitations applicable to actions founded on domestic judgments or decrees; renewal of judgment or decree; notice of renewal.

JUDICIAL DECISIONS

ANALYSIS

2. Applicability.
5. Computation of limitation period.

2. Applicability.

Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment. Coleman v. WGST, LLC, — So. 3d —,

2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

5. Computation of limitation period.

Wife filed her contempt action within seven years after husband breached the property settlement agreement by allowing his insurance policy to lapse in 2013, and thus wife's action was not barred by the statute of limitations; husband's argument that wife's claim was barred by the three-year statute of limitations applicable to claims for breach of contract lacked merit. Siders v. Zickler, 312 So. 3d 1224, 2021 Miss. App. LEXIS 106 (Miss. Ct. App. 2021).

§ 15-1-45. Limitations applicable to actions founded on foreign judgments or decrees.

JUDICIAL DECISIONS

1. In general.

Claimant's causes of action seeking to enforce a foreign judgment were time-barred under the applicable statutes of limitation because the claimant did not file the complaint within seven years of the foreign judgment. Furthermore, enrolling a foreign judgment did not reset the applicable statute of limitations period. Coleman v. WGST, LLC, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

§ 15-1-47. Lien of judgments limited.

JUDICIAL DECISIONS

1. In general.

Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment. Coleman v. WGST, LLC, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

JUDICIAL DECISIONS

ANALYSIS

2. In general.
4. —Applicability.
15. Torts, generally.
19. —Infliction of emotional distress.
27. Running of limitation period, generally.
28. — Accrual of cause of action; miscellaneous.
29. — —Real property, deeds, etc.
40. Particular cases; miscellaneous.

2. In general.

4. —Applicability.

Wife filed her contempt action within seven years after husband breached the property settlement agreement by allowing his insurance policy to lapse in 2013, and thus wife's action was not barred by the statute of limitations; husband's argument that wife's claim was barred by the three-year statute of limitations applicable to claims for breach of contract lacked merit. Siders v. Zickler, 312 So. 3d 1224, 2021 Miss. App. LEXIS 106 (Miss. Ct. App. 2021).

Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment. Coleman v. WGST, LLC, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

15. Torts, generally.

19. —Infliction of emotional distress.

Circuit court was correct in allowing an insured's abuse of process and intentional infliction of emotional distress claims to proceed because the actions at issue did not fall within the specific subjects expressed within Miss. Code Ann. § 15-1-35 but fit comfortably within the general clause expressed by Miss. Code Ann. § 15-1-49; the insured's action was timely because it was filed well-within by the three-

year statute of limitations established by § 15-1-49. Geico Cas. Co. v. Stapleton, — So. 3d —, 2021 Miss. LEXIS 100 (Miss. Apr. 15, 2021).

Supreme court overrules Jones v. Fluor Daniel Services Corp., 32 So. 3d 417 (Miss. 2010), because it judicially expanded the one-year statute of limitations in Miss. Code Ann. § 15-1-35 to include torts beyond the ones chosen by the Legislature and return to the supreme court's original interpretation as stated in Norman v. Bucklew, 684 So. 2d 1246, 1256 (Miss. 1996); intentional and/or negligent infliction of emotional distress claims are governed by the three-year statute of limitations. Geico Cas. Co. v. Stapleton, — So. 3d —, 2021 Miss. LEXIS 100 (Miss. Apr. 15, 2021).

27. Running of limitation period, generally.

28. — Accrual of cause of action; miscellaneous.

29. — —Real property, deeds, etc.

Grantor's claim for the value of the trees cut was not time-barred because the amended complaint adding the claim was filed within the three-year limitations period that began running when the timber was cut; the Mississippi catch-all limitations provision applied to the grantor's claim for actual damage for the timber cutting. Alexander v. Musgrove, 311 So. 3d 668, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. 2021).

40. Particular cases; miscellaneous.

If claims were barred as a matter of law by the Mississippi statute of limitations, then those claimants' requests for relief from the Bar Date made no difference, because there were no valid claims for which any bankruptcy relief or recovery would be available. In re Tronox Inc., — B.R. —, 2021 Bankr. LEXIS 577 (Bankr. S.D.N.Y. Mar. 10, 2021).

§ 15-1-65. Action barred in another jurisdiction barred here.

JUDICIAL DECISIONS

1. In general.

Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment. Coleman v. WGST, LLC, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

CHAPTER 3.

PREVENTION OF FRAUDS

ARTICLE 1.

IN GENERAL.

§ 15-3-1. Certain contracts to be in writing.

JUDICIAL DECISIONS

21. Sale or lease of land, generally.

24. —Oral promises and contracts.

Circuit court erroneously denied an evictee any opportunity in an eviction action to demonstrate the elements of equitable estoppel based upon the statute of frauds because the evictee sought to demonstrate that the evictee and the property owner had an oral agreement that the evictee's monthly payments to the owner were to purchase the property as a co-owner of the property. Beckworth v. Beckworth, 312 So. 3d 391, 2021 Miss. App. LEXIS 90 (Miss. Ct. App. 2021).

TITLE 19.
COUNTIES AND COUNTY OFFICERS
CHAPTER 25.
SHERIFFS

§ 19-25-37. Duty of sheriff to execute and return process.

JUDICIAL DECISIONS

1. In general.

Circuit court abused its discretion in dismissing the citizen's mandamus petition and failing to compel the sheriff to execute process on public officials named as defendants in the citizen's public records action; the citizen had standing to seek mandamus and had a right to relief as he properly sought service of process, the sheriff was required by law to execute process, and the citizen had no other adequate remedy at law. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

TITLE 21.

MUNICIPALITIES

CHAPTER 1.

CLASSIFICATION, CREATION, ABOLITION, AND EXPANSION

INCORPORATION

§ 21-1-13. Preparing and filing of petition.

JUDICIAL DECISIONS

3. Sufficiency of signatures.

Chancellor did not err in concluding that an incorporation petition contained the signatures of two-thirds of the qualified electors residing in a proposed incorporation area as required by Miss. Code Ann. § 21-1-13 (Rev. 2015) where the amended petition referred back multiple times to the earlier petition filed, which included the numerous lists of signatures, and the chancellor's methodology for determining who should have been on the voter rolls for purposes of the signature requirement was not manifestly erroneous. Peco Foods Inc. v. City of Canton (In re Enlarging, Extending & Defining the Corp. Limits & Boundaries), — So. 3d —, 2021 Miss. LEXIS 119 (Miss. May 6, 2021).

EXTENSION OR CONTRACTION OF CORPORATE BOUNDARIES

§ 21-1-33. Hearing on petition; decree.

JUDICIAL DECISIONS

8. Decree.

Chancellor's approval of annexation of two areas was affirmed where credible evidence showed, inter alia, the need for expansion in those areas, the areas were in a path of growth, and potential health hazards from sewage and waste disposal could be remedied. The disapproval of three other areas was affirmed as those areas did not meet the indicia of reasonablness. Peco Foods Inc. v. City of Canton (In re Enlarging, Extending & Defining the Corp. Limits & Boundaries), — So. 3d —, 2021 Miss. LEXIS 119 (Miss. May 6, 2021).

CHAPTER 27.
PUBLIC UTILITIES AND TRANSPORTATION

METROPOLITAN AREA WASTE DISPOSAL

§ 21-27-189. Other powers and authority of municipality.

JUDICIAL DECISIONS

1. Interpretation.

Statute is clear that municipalities have the discretion to create and maintain a sewer system. Williams v. City of Batesville, — So. 3d —, 2021 Miss. LEXIS 69 (Miss. Mar. 18, 2021).

TITLE 23.

ELECTIONS

CHAPTER 15.

MISSISSIPPI ELECTION CODE

ARTICLE 29.

ELECTION CONTESTS.

SUBARTICLE B.

CONTESTS OF PRIMARY ELECTIONS.

§ 23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.

JUDICIAL DECISIONS

1. In general.

Appellate court lacked subject matter jurisdiction to review whether a political candidate's residence was within the election district at the time of a primary election because the trial judge, with the election commissioners in attendance, dictated findings, without objection, that the candidate's residence was in the district and the question of whether the candidate met the residency requirement involved questions of fact. McQuirter v. Archie, 311 So. 3d 1147, 2020 Miss. LEXIS 507 (Miss. 2020).

§ 23-15-933. Appeal from judgment; restrictions upon review of findings of fact.

JUDICIAL DECISIONS

1. In general.

Appellate court lacked subject matter jurisdiction to review whether a political candidate's residence was within the election district at the time of a primary election because the trial judge, with the election commissioners in attendance, dictated findings, without objection, that the candidate's residence was in the district and the question of whether the candidate met the residency requirement involved questions of fact. McQuirter v. Archie, 311 So. 3d 1147, 2020 Miss. LEXIS 507 (Miss. 2020).

TITLE 25.

PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER 11.

SOCIAL SECURITY AND PUBLIC EMPLOYEES' RETIREMENT AND DISABILITY BENEFITS

ARTICLE 3.

ADDITIONAL STATE RETIREMENT AND DISABILITY BENEFITS.

§ 25-11-114. Retirement allowance for death before retirement or death or disability in line of duty.

JUDICIAL DECISIONS

2. Causation.

Denial by the Public Employees' Retirement System of Mississippi of a terminated police officer's request for duty-related disability benefits—when the officer suffered from post-traumatic stress disorder following the fatal shooting of a suspect—was appropriate because the accident or traumatic event that caused the disorder did not also cause a physical injury to the officer that occurred in the line of duty. Carver v. Public Emples. Ret. Sys. of Miss., 306 So. 3d 694, 2020 Miss. LEXIS 483 (Miss. 2020).

CHAPTER 61.

PUBLIC ACCESS TO PUBLIC RECORDS

§ 25-61-13. Mississippi Ethics Commission to enforce chapter; procedure upon complaint by any person denied right to inspect public records; petition to chancery court to enforce or appeal order.

JUDICIAL DECISIONS

1. In general.

Circuit court's ruling on a public records issue was beyond the limited jurisdiction conferred by the chancery court's transfer order, in which that court explicitly retained jurisdiction of the public records action. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

Circuit court abused its discretion in dismissing the citizen's mandamus petition and failing to compel the sheriff to execute process on public officials named as defendants in the citizen's public records action; the citizen had standing to seek mandamus and had a right to relief as he properly sought service of process, the sheriff was required by law to execute process, and the citizen had no other adequate remedy at law. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

TITLE 27.

TAXATION AND FINANCE

Chapter 7. Income Tax and Withholding. 27-7-1

CHAPTER 7.

INCOME TAX AND WITHHOLDING

Article 1. Income Tax. 27-7-1

ARTICLE 1.

INCOME TAX.

Sec.
27-7-15. Gross income defined.

§ 27-7-15. Gross income defined.

(1) For the purposes of this article, except as otherwise provided, the term "gross income" means and includes the income of a taxpayer derived from salaries, wages, fees or compensation for service, of whatever kind and in whatever form paid, including income from governmental agencies and subdivisions thereof; or from professions, vocations, trades, businesses, commerce or sales, or renting or dealing in property, or reacquired property; also from annuities, interest, rents, dividends, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, or the transaction of any business carried on for gain or profit, or gains, or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items of income shall be included in the gross income for the taxable year in which received by the taxpayer. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "gross income" within the meaning of this article.

(2) In determining gross income for the purpose of this section, the following, under regulations prescribed by the commissioner, shall be applicable:

(a) **Dealers in property.** Federal rules, regulations and revenue procedures shall be followed with respect to installment sales unless a transaction results in the shifting of income from inside the state to outside the state.

(b) **Casual sales of property.**

(i) Prior to January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except they shall be applied and administered as if H.R. 3594, the Installment Tax

Correction Act of 2000 of the 106th Congress, had not been enacted. This provision will generally affect taxpayers, reporting on the accrual method of accounting, entering into installment note agreements on or after December 17, 1999. Any gain or profit resulting from the casual sale of property will be recognized in the year of sale.

(ii) From and after January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except as provided in this subparagraph (ii). Gain or profit from the casual sale of property shall be recognized in the year of sale. When a taxpayer recognizes gain on the casual sale of property in which the gain is deferred for federal income tax purposes, a taxpayer may elect to defer the payment of tax resulting from the gain as allowed and to the extent provided under regulations prescribed by the commissioner. If the payment of the tax is made on a deferred basis, the tax shall be computed based on the applicable rate for the income reported in the year the payment is made. Except as otherwise provided in subparagraph (iii) of this paragraph (b), deferring the payment of the tax shall not affect the liability for the tax. If at any time the installment note is sold, contributed, transferred or disposed of in any manner and for any purpose by the original note holder, or the original note holder is merged, liquidated, dissolved or withdrawn from this state, then all deferred tax payments under this section shall immediately become due and payable.

(iii) If the selling price of the property is reduced by any alteration in the terms of an installment note, including default by the purchaser, the gain to be recognized is recomputed based on the adjusted selling price in the same manner as for federal income tax purposes. The tax on this amount, less the previously paid tax on the recognized gain, is payable over the period of the remaining installments. If the tax on the previously recognized gain has been paid in full to this state, the return on which the payment was made may be amended for this purpose only. The statute of limitations in Section 27-7-49 shall not bar an amended return for this purpose.

(c) **Reserves of insurance companies.** In the case of insurance companies, any amounts in excess of the legally required reserves shall be included as gross income.

(d) **Affiliated companies or persons.** As regards sales, exchanges or payments for services from one to another of affiliated companies or persons or under other circumstances where the relation between the buyer and seller is such that gross proceeds from the sale or the value of the exchange or the payment for services are not indicative of the true value of the subject matter of the sale, exchange or payment for services, the commissioner shall prescribe uniform and equitable rules for determining the true value of the gross income, gross sales, exchanges or payment for services, or require consolidated returns of affiliates.

(e) **Alimony and separate maintenance payments.** The federal rules, regulations and revenue procedures in determining the deductibility and taxability of alimony payments shall be followed in this state.

(f) **Reimbursement for expenses of moving.** There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one (1) residence to another residence which is attributable to employment or self-employment.

(3) In the case of taxpayers other than residents, gross income includes gross income from sources within this state.

(4) The words "gross income" do not include the following items of income which shall be exempt from taxation under this article:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured. However, the income from the proceeds of such policies or contracts shall be included in the gross income.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance policies, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included in the gross income.

(d) Interest upon the obligations of the United States or its possessions, or securities issued under the provisions of the Federal Farm Loan Act of 1916, or bonds issued by the War Finance Corporation, or obligations of the State of Mississippi or political subdivisions thereof.

(e) The amounts received through accident or health insurance as compensation for personal injuries or sickness, plus the amount of any damages received for such injuries or such sickness or injuries, or through the War Risk Insurance Act, or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

(f) Income received by any religious denomination or by any institution or trust for moral or mental improvements, religious, Bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes or for two (2) or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes.

(g) Income received by a domestic corporation which is "taxable in another state" as this term is defined in this article, derived from business activity conducted outside this state. Domestic corporations taxable both within and without the state shall determine Mississippi income on the same basis as provided for foreign corporations under the provisions of this article.

(h) In case of insurance companies, there shall be excluded from gross income such portion of actual premiums received from an individual policyholder as is paid back or credited to or treated as an abatement of premiums of such policyholder within the taxable year.

(i) Income from dividends that has already borne a tax as dividend income under the provisions of this article, when such dividends may be specifically identified in the possession of the recipient.

(j) Amounts paid by the United States to a person as added compensation for hazardous duty pay as a member of the Armed Forces of the United States in a combat zone designated by Executive Order of the President of the United States.

(k) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid under the federal Social Security Act, the Railroad Retirement Act, the Federal Civil Service Retirement Act, or any other retirement system of the United States government, retirement allowances paid under the Mississippi Public Employees' Retirement System, Mississippi Highway Safety Patrol Retirement System or any other retirement system of the State of Mississippi or any political subdivision thereof. The exemption allowed under this paragraph (k) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(*l*) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid by any public or governmental retirement system not designated in paragraph (k) or any private retirement system or plan of which the recipient was a member at any time during the period of his employment. Amounts received as a distribution under a Roth Individual Retirement Account shall be treated in the same manner as provided under the Internal Revenue Code of 1986, as amended. The exemption allowed under this paragraph (*l*) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(m) National Guard or Reserve Forces of the United States compensation not to exceed the aggregate sum of Five Thousand Dollars ($5,000.00) for any taxable year through the 2005 taxable year, and not to exceed the aggregate sum of Fifteen Thousand Dollars ($15,000.00) for any taxable year thereafter.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the Armed Forces (i) served in a combat zone as designated by Executive Order of the President of the United States or a qualified hazardous duty area as defined by federal law, or both; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone. For the purposes of this paragraph (n), the term "maximum enlisted amount" means and has the same definition as that term has in 26 USCS 112.

(o) The proceeds received from federal and state forestry incentive programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting, the ratio of net profits to total sales may be applied to the increase in export sales. This paragraph (p) shall

only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

(q) Amounts paid by the federal government for the construction of soil conservation systems as required by a conservation plan adopted pursuant to 16 USCS 3801 et seq.

(r) The amount deposited in a medical savings account, and any interest accrued thereon, that is a part of a medical savings account program as specified in the Medical Savings Account Act under Sections 71-9-1 through 71-9-9; provided, however, that any amount withdrawn from such account for purposes other than paying eligible medical expense or to procure health coverage shall be included in gross income.

(s) Amounts paid by the Mississippi Soil and Water Conservation Commission from the Mississippi Soil and Water Cost-Share Program for the installation of water quality best management practices.

(t) Dividends received by a holding corporation, as defined in Section 27-13-1, from a subsidiary corporation, as defined in Section 27-13-1.

(u) Interest, dividends, gains or income of any kind on any account in the Mississippi Affordable College Savings Trust Fund, as established in Sections 37-155-101 through 37-155-125, to the extent that such amounts remain on deposit in the MACS Trust Fund or are withdrawn pursuant to a qualified withdrawal, as defined in Section 37-155-105.

(v) Interest, dividends or gains accruing on the payments made pursuant to a prepaid tuition contract, as provided for in Section 37-155-17.

(w) Income resulting from transactions with a related member where the related member subject to tax under this chapter was required to, and did in fact, add back the expense of such transactions as required by Section 27-7-17(2). Under no circumstances may the exclusion from income exceed the deduction add-back of the related member, nor shall the exclusion apply to any income otherwise excluded under this chapter.

(x) Amounts that are subject to the tax levied pursuant to Section 27-7-901, and are paid to patrons by gaming establishments licensed under the Mississippi Gaming Control Act.

(y) Amounts that are subject to the tax levied pursuant to Section 27-7-903, and are paid to patrons by gaming establishments not licensed under the Mississippi Gaming Control Act.

(z) Interest, dividends, gains or income of any kind on any account in a qualified tuition program and amounts received as distributions under a qualified tuition program shall be treated in the same manner as provided under the United States Internal Revenue Code, as amended. For the purposes of this paragraph (z), the term "qualified tuition program" means and has the same definition as that term has in 26 USCS 529.

(aa) The amount deposited in a health savings account, and any interest accrued thereon, that is a part of a health savings account program as specified in the Health Savings Accounts Act created in Sections 83-62-1 through 83-62-9; however, any amount withdrawn from such account for

purposes other than paying qualified medical expenses or to procure health coverage shall be included in gross income, except as otherwise provided by Sections 83-62-7 and 83-62-9.

(bb) Amounts received as qualified disaster relief payments shall be treated in the same manner as provided under the United States Internal Revenue Code, as amended.

(cc) Amounts received as a "qualified Hurricane Katrina distribution" as defined in the United States Internal Revenue Code, as amended.

(dd) Amounts received by an individual which may be excluded from income as foreign earned income for federal income tax purposes.

(ee) Amounts received by a qualified individual, directly or indirectly, from an employer or nonprofit housing organization that are qualified housing expenses associated with an employer-assisted housing program. For purposes of this paragraph (ee):

(i) "Qualified individual" means any individual whose household income does not exceed one hundred twenty percent (120%) of the area median gross income (as defined by the United States Department of Housing and Urban Development), adjusted for household size, for the area in which the housing is located.

(ii) "Nonprofit housing organization" means an organization that is organized as a not-for-profit organization under the laws of this state or another state and has as one of its purposes:

1. Homeownership education or counseling;

2. The development of affordable housing; or

3. The development or administration of employer-assisted housing programs.

(iii) "Employer-assisted housing program" means a separate written plan of any employer (including, without limitation, tax-exempt organizations and public employers) for the exclusive benefit of the employer's employees to pay qualified housing expenses to assist the employer's employees in securing affordable housing.

(iv) "Qualified housing expenses" means:

1. With respect to rental assistance, an amount not to exceed Two Thousand Dollars ($2,000.00) paid for the purpose of assisting employees with security deposits and rental subsidies; and

2. With respect to homeownership assistance, an amount not to exceed the lesser of Ten Thousand Dollars ($10,000.00) or six percent (6%) of the purchase price of the employee's principal residence that is paid for the purpose of assisting employees with down payments, payment of closing costs, reduced interest mortgages, mortgage guarantee programs, mortgage forgiveness programs, equity contribution programs, or contributions to homebuyer education and/or homeownership counseling of eligible employees.

(ff) For the 2010 taxable year and any taxable year thereafter, amounts converted in accordance with the United States Internal Revenue Code, as amended, from a traditional Individual Retirement Account to a Roth

Individual Retirement Account. The exemption allowed under this paragraph (ff) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(gg) Amounts received for the performance of disaster or emergency-related work as defined in Section 27-113-5.

(hh) The amount deposited in a catastrophe savings account established under Sections 27-7-1001 through 27-7-1007, interest income earned on the catastrophe savings account, and distributions from the catastrophe savings account; however, any amount withdrawn from a catastrophe savings account for purposes other than paying qualified catastrophe expenses shall be included in gross income, except as otherwise provided by Sections 27-7-1001 through 27-7-1007.

(ii) Interest, dividends, gains or income of any kind on any account in the Mississippi Achieving a Better Life Experience (ABLE) Trust Fund, as established in Chapter 28, Title 43, to the extent that such amounts remain on deposit in the ABLE Trust Fund or are withdrawn pursuant to a qualified withdrawal, as defined in Section 43-28-11.

(jj) Subject to the limitations provided under Section 27-7-1103, amounts deposited into a first-time homebuyer savings account and any interest or other income earned attributable to an account and monies or funds withdrawn or distributed from an account for the payment of eligible costs by or on behalf of a qualified beneficiary; however, any monies or funds withdrawn or distributed from a first-time homebuyer savings account for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary shall be included in gross income. For the purpose of this paragraph (jj), the terms "first-time homebuyer savings account," "eligible costs" and "qualified beneficiary" mean and have the same definitions as such terms have in Section 27-7-1101.

(kk) Amounts paid by an agricultural disaster program as compensation to an agricultural producer, cattle farmer or cattle rancher who has suffered a loss as the result of a disaster or emergency, including, but not limited to, the following United States Department of Agriculture programs:

(i) Livestock Forage Disaster Program;

(ii) Livestock Indemnity Program;

(iii) Emergency Assistance for Livestock, Honey Bees and Farm-raised Fish Program;

(iv) Emergency Conservation Program;

(v) Noninsured Crop Disaster Assistance Program;

(vi) Pasture, Rangeland, Forage Pilot Insurance Program;

(vii) Annual Forage Pilot Program;

(viii) Livestock Risk Protection Insurance Program; and

(ix) Livestock Gross Margin Insurance Plan.

(*ll*) Amounts received as advances and/or grants under the federal Coronavirus Aid, Relief, and Economic Security Act.

(mm) Any and all cancelled indebtedness provided for under the Coronavirus Aid, Relief, and Economic Security Act.

(nn) Amounts received as payments under Section 27-3-85.

(oo) Amounts received as grants under the 2020 COVID-19 Mississippi Business Assistance Act.

(pp) Amounts received as grants under Section 57-1-521.

(5) Prisoners of war, missing in action-taxable status.

(a) **Members of the Armed Forces.** Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status, as defined in paragraph (d) of this subsection, during the Vietnam Conflict as a result of such conflict.

(b) **Civilian employees.** Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam Conflict as a result of such conflict.

(c) **Period of conflict.** For the purpose of this subsection, the Vietnam Conflict began February 28, 1961, and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. For the purpose of this subsection, an individual is in a missing status as a result of the Vietnam Conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. "Southeast Asia," as used in this paragraph, is defined to include Cambodia, Laos, Thailand and waters adjacent thereto.

(d) "Missing status" means the status of an employee or member of the Armed Forces who is in active service and is officially carried or determined to be absent in a status of (i) missing; (ii) missing in action; (iii) interned in a foreign country; (iv) captured, beleaguered or besieged by a hostile force; or (v) detained in a foreign country against his will; but does not include the status of an employee or member of the Armed Forces for a period during which he is officially determined to be absent from his post of duty without authority.

(e) "Active service" means active federal service by an employee or member of the Armed Forces of the United States in an active duty status.

(f) "Employee" means one who is a citizen or national of the United States or an alien admitted to the United States for permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the Armed Forces.

(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of this subsection (5) is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the Department of Revenue within three (3) years after the date of the enactment of this subsection.

(i) The provisions of this subsection shall be effective for taxable years ending on or after February 28, 1961.

(6) A shareholder of an S corporation, as defined in Section 27-8-3(1)(g), shall take into account the income, loss, deduction or credit of the S corporation only to the extent provided in Section 27-8-7(2).

HISTORY: Codes, 1942, § 9220-08; Laws, 1934, ch. 120; Laws, 1936, ch. 151; Laws, 1940, ch. 123; Laws, 1942, chs. 125, 129; Laws, 1944, ch. 122; Laws, 1948, ch. 464, § 1; Laws, 1952, ch. 402, § 7; Laws, 1954, ch. 366; Laws, 1966, ch. 628, § 2; Laws, 1973, ch. 504, § 1; Laws, 1978, ch. 475, § 1; Laws, 1982, ch. 489, § 1; Laws, 1984, ch. 393, § 8; Laws, 1986, ch. 393, § 1; Laws, 1986, ch. 513, § 8; brought forward without change, Laws, 1987, ch. 345, § 8; Laws, 1987, ch. 423, § 1; Laws, 1990, ch. 523, § 5; Laws, 1993, ch. 377, § 1; Laws, 1993, ch. 456, § 13; Laws, 1993, ch. 523, § 1; Laws, 1994, ch. 468, § 6; Laws, 1997, ch. 606, § 8; Laws, 1998, ch. 448, § 1; Laws, 1999, ch. 446, § 1; Laws, 2000, ch. 473, § 16; Laws, 2001, ch. 452, § 2; Laws, 2001, ch. 586, § 2; Laws, 2002, ch. 516, § 2; Laws, 2003, ch. 319, § 2; Laws, 2004, ch. 500, § 1; Laws, 2005, ch. 443, § 1; Laws, 2005, ch. 484, § 6; Laws, 2005, 5th Ex Sess, ch. 22, § 1; Laws, 2006, ch. 497, § 1; Laws, 2007, ch. 443, § 1; Laws, 2008, ch. 489, § 1; Laws, 2009, ch. 349, § 1; Laws, 2010, ch. 430, § 1; Laws, 2015, ch. 420, § 6; Laws, 2015, ch. 457, § 5; Laws, 2017, ch. 350, § 15; Laws, 2017, ch. 376, § 3, eff from and after March 20, 2017; Laws, 2018, ch. 415, § 1, eff from and after January 1, 2018; Laws, 2020, ch. 421, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 503, § 4, eff from and after January 1, 2020.

Editor's Notes — Laws of 2020, ch. 503, § 1, effective October 9, 2020, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rental Assistance Grant Program.'"

Laws of 2020, ch. 503, § 5, effective October 9, 2020, provides:

"SECTION 5. Section 4 of this act shall take effect and be in force from and after January 1, 2020, and the remainder of this act shall take effect and be in force from and after its passage."

Amendment Notes — The first 2020 amendment (ch. 421), effective January 1, 2020, added (4)(*ll*) through (oo).

The second 2020 amendment (ch. 503), effective January 1, 2020, added (4)(pp).

CHAPTER 43.

AD VALOREM TAXES—NOTICE OF TAX SALE TO OWNERS AND LIENORS

§ 27-43-1. Notice to owners.

JUDICIAL DECISIONS

1. In general.

Because substantial credible evidence supported the finding that many of the requirements under the statute were not met, a 1998 tax deed was void, and a grantee was the rightful owner of the property and was entitled to statutory redemption notice with respect to the 1993 tax sale; the county chancery clerk admitted to numerous notice insufficiencies relating to the 1990 tax sale, including the chancery court's failure to notify the grantee or her agent and publish notice of the tax sale. Alexander v. Musgrove, 311 So. 3d 668, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. 2021).

§ 27-43-3. Notice to owners; service of notice; fees [Effective until July 1, 2021].

JUDICIAL DECISIONS

1. In general.

Because substantial credible evidence supported the finding that many of the requirements under the statute were not met, a 1998 tax deed was void, and a grantee was the rightful owner of the property and was entitled to statutory redemption notice with respect to the 1993 tax sale; the county chancery clerk admitted to numerous notice insufficiencies relating to the 1990 tax sale, including the chancery court's failure to notify the grantee or her agent and publish notice of the tax sale. Alexander v. Musgrove, 311 So. 3d 668, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. 2021).

Because the chancery court's determination that the first tax deed was void was never challenged on appeal, the issue was waived; a purchaser waived any challenge to the chancery court's determination that the 1993 tax deed was void, including the theory that the grantee was not entitled to statutory notice of redemption with respect to the 1990 tax sale. Alexander v. Musgrove, 311 So. 3d 668, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. 2021).

It did not appear that any discussion was had regarding a purchaser's damages after the chancery court set aside a tax sale for lack of notice, and thus, the purchaser, had not been given an opportunity to present proof of his damages; because the tax sale had been declared void, the purchaser was entitled to a hearing to present proof of his damages. Thoden v. Hallford, 310 So. 3d 1156, 2021 Miss. LEXIS 21 (Miss. 2021).

It was proper to void a tax sale for lack of notice, and the case was remanded for the purpose of a hearing on damages because the purchaser was entitled to a refund of his tax sale purchase money paid, and he was entitled to a lien on the land for the amount of what he paid at the tax sale with interest on that amount. Thoden v. Hallford, 310 So. 3d 1156, 2021 Miss. LEXIS 21 (Miss. 2021).

CHAPTER 45.

AD VALOREM TAXES—REDEMPTION OF LAND SOLD FOR TAXES

§ 27-45-3. Persons who may redeem land.

JUDICIAL DECISIONS

1. In general.

Statute was inapplicable to the case because the case did not involve a redemption; the taxpayer received no notice that the redemption period on her property would soon expire, and thus, she never made any attempt to redeem the property. Thoden v. Hallford, 310 So. 3d 1156, 2021 Miss. LEXIS 21 (Miss. 2021).

§ 27-45-27. Rights of purchaser at tax sale; effect of lien; no right of action to challenge validity of tax sale; liability of county or municipal officers to purchasers.

JUDICIAL DECISIONS

1. In general.

It did not appear that any discussion was had regarding a purchaser's damages after the chancery court set aside a tax sale for lack of notice, and thus, the purchaser, had not been given an opportunity to present proof of his damages; because the tax sale had been declared void, the purchaser was entitled to a hearing to present proof of his damages. Thoden v. Hallford, 310 So. 3d 1156, 2021 Miss. LEXIS 21 (Miss. 2021).

It was proper to void a tax sale for lack of notice, and the case was remanded for the purpose of a hearing on damages because the

purchaser was entitled to a refund of his tax sale purchase money paid, and he was entitled to a lien on the land for the amount of what he paid at the tax sale with interest on that amount. Thoden v. Hallford, 310 So. 3d 1156, 2021 Miss. LEXIS 21 (Miss. 2021).

CHAPTER 65.

SALES TAX

IN GENERAL

§ 27-65-3. Definitions.

JUDICIAL DECISIONS

1. In general.

Chancery court did not err in determining that the company's roofing services were subject to Mississippi sales tax; the definition of tangible personal property includes property sold on an installed basis which may become part of real or personal property and thus is subject to sales tax. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

Definitions in Miss. Code Ann. § 27-65-3 apply to Miss. Code Ann. §§ 27-65-17, 27-65-23, and the definition of installation services includes sales of roofing and similar personal property; the plain language of the statutes require those selling and installing roofing materials, as the company did here, to remit sales tax on the gross proceeds of their sales, plus the Legislature clearly included the sale and installation of roofing materials to be a taxable event. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

§ 27-65-17. Selling tangible personal property wholesale and retail.

JUDICIAL DECISIONS

2. Construction and application, generally.

Chancery court did not err in determining that the company's roofing services were subject to Mississippi sales tax; the definition of tangible personal property includes property sold on an installed basis which may become part of real or personal property and thus is subject to sales tax. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

Definitions in Miss. Code Ann. § 27-65-3 apply to Miss. Code Ann. §§ 27-65-17, 27-65-23, and the definition of installation services includes sales of roofing and similar personal property; the plain language of the statutes require those selling and installing roofing materials, as the company did here, to remit sales tax on the gross proceeds of their sales, plus the Legislature clearly included the sale and installation of roofing materials to be a taxable event. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

§ 27-65-23. Miscellaneous businesses.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Definitions in Miss. Code Ann. § 27-65-3 apply to Miss. Code Ann. §§ 27-65-17, 27-65-23, and the definition of installation services includes sales of roofing and similar personal property; the plain language of the statutes require those selling and installing roofing materials, as the company did here, to remit sales

tax on the gross proceeds of their sales, plus the Legislature clearly included the sale and installation of roofing materials to be a taxable event. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

§ 27-65-37. Assessment of tax by commissioner.

JUDICIAL DECISIONS

2. Construction and application.

There was no issue of inadequate tax assessment records and the audits were performed based upon the company's own records; accordingly, the statutory presumption of correctness never attached, and the burden of persuasion shifted to the company, who could not meet it. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

§ 27-65-43. Taxpayer must keep records.

JUDICIAL DECISIONS

1. In general.

Convenience store failed to keep and preserve adequate records and thus could not rebut the presumption that the audit by the Department of Revenue was presumptively correct, and the fact that the store used an accountant to handle some of their financial affairs did not shield the store from the consequences of the audit's findings; both case law and the statute are clear that an audit by the Department is presumptively correct, and it is then the duty of the taxpayer to rebut it. Jackson Land Food Mart Inc. v. Frierson, — So. 3d —, 2021 Miss. App. LEXIS 123 (Miss. Ct. App. Mar. 23, 2021).

CHAPTER 103.

STATE BUDGET

BUDGET CONTINGENCY AND CAPITAL EXPENSE FUNDS

§ 27-103-301. Budget Contingency Fund created.

Editor's Notes — Laws of 2020, ch. 498, § 1, effective October 9, 2020, provides:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the "Poultry Farmer Stabilization Grant Program Fund" out of the Budget Contingency Fund..... $3,000,000.00.

(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the "Mississippi Supplemental CFAP Grant Program Fund" out of the Budget Contingency Fund .....$9,500,000.00.

(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the "Sweet Potato Farm Sustainment Grant Program Fund" out of the Budget Contingency Fund .....$500,000.00."

Laws of 2020, ch. 500, § 1, effective October 9, 2020, provides:

"SECTION 1. Upon the effective date of this act, the State Fiscal Officer shall transfer to the "ICU Infrastructure Fund" out of the Budget Contingency Fund..... $ 10,000,000.00."

Laws of 2020, ch. 503, § 2, effective October 9, 2020, provides:

"SECTION 2. Upon the effective date of this act, the State Fiscal Officer shall transfer to the Rental Assistance Grant Program Fund created by Section 2 of this act out of the Budget Contingency Fund (Fund Number 6117700000) .....$ 20,000,000.00."

TITLE 41.

PUBLIC HEALTH

Chapter 7.	Hospital and Health Care Commissions.	41-7-1
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CHAPTER 7.

HOSPITAL AND HEALTH CARE COMMISSIONS

Health Care Certificate of Need Law of 1979. 41-7-171

HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

Sec.
41-7-191. Certificate of need; activities for which certificate is required.

§ 41-7-191. Certificate of need; activities for which certificate is required.

(1) No person shall engage in any of the following activities without obtaining the required certificate of need:

(a) The construction, development or other establishment of a new health care facility, which establishment shall include the reopening of a health care facility that has ceased to operate for a period of sixty (60) months or more;

(b) The relocation of a health care facility or portion thereof, or major medical equipment, unless such relocation of a health care facility or portion thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health care facility, is within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility;

(c) Any change in the existing bed complement of any health care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located; however, if a health care facility has voluntarily delicensed some of its existing bed complement, it may later relicense some or all of its delicensed beds without the necessity of having to acquire a certificate of need. The State Department of Health shall maintain a record of the delicensing health care facility and its voluntarily delicensed beds and continue counting those beds as part of the state's total bed count for health care planning purposes. If a health care facility that has voluntarily delicensed some of its beds later desires to relicense some or all of its voluntarily delicensed beds, it shall notify the State Department of Health of its intent to increase the number of its licensed beds. The State Department

of Health shall survey the health care facility within thirty (30) days of that notice and, if appropriate, issue the health care facility a new license reflecting the new contingent of beds. However, in no event may a health care facility that has voluntarily delicensed some of its beds be reissued a license to operate beds in excess of its bed count before the voluntary delicensure of some of its beds without seeking certificate of need approval;

(d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered:

(i) Open-heart surgery services;

(ii) Cardiac catheterization services;

(iii) Comprehensive inpatient rehabilitation services;

(iv) Licensed psychiatric services;

(v) Licensed chemical dependency services;

(vi) Radiation therapy services;

(vii) Diagnostic imaging services of an invasive nature, i.e. invasive digital angiography;

(viii) Nursing home care as defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);

(ix) Home health services;

(x) Swing-bed services;

(xi) Ambulatory surgical services;

(xii) Magnetic resonance imaging services;

(xiii) [Deleted]

(xiv) Long-term care hospital services;

(xv) Positron emission tomography (PET) services;

(e) The relocation of one or more health services from one physical facility or site to another physical facility or site, unless such relocation, which does not involve a capital expenditure by or on behalf of a health care facility, (i) is to a physical facility or site within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility where the health care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such court, or by order of the State Department of Health, or by order of any other agency or legal entity of the state, the federal government, or any political subdivision of either, whose order is also approved by the State Department of Health;

(f) The acquisition or otherwise control of any major medical equipment for the provision of medical services; however, (i) the acquisition of any major medical equipment used only for research purposes, and (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(g) Changes of ownership of existing health care facilities in which a notice of intent is not filed with the State Department of Health at least thirty (30) days prior to the date such change of ownership occurs, or a change in services or bed capacity as prescribed in paragraph (c) or (d) of this subsection as a result of the change of ownership; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(h) The change of ownership of any health care facility defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h), in which a notice of intent as described in paragraph (g) has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership;

(i) Any activity described in paragraphs (a) through (h) if undertaken by any person if that same activity would require certificate of need approval if undertaken by a health care facility;

(j) Any capital expenditure or deferred capital expenditure by or on behalf of a health care facility not covered by paragraphs (a) through (h);

(k) The contracting of a health care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h) to establish a home office, subunit, or branch office in the space operated as a health care facility through a formal arrangement with an existing health care facility as defined in subparagraph (ix) of Section 41-7-173(h);

(*l*) The replacement or relocation of a health care facility designated as a critical access hospital shall be exempt from subsection (1) of this section so long as the critical access hospital complies with all applicable federal law and regulations regarding such replacement or relocation;

(m) Reopening a health care facility that has ceased to operate for a period of sixty (60) months or more, which reopening requires a certificate of need for the establishment of a new health care facility.

(2) The State Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to, or expansion of any health care facility defined in subparagraphs (iv) (skilled nursing facility) and (vi) (intermediate care facility) of Section 41-7-173(h) or the conversion of vacant hospital beds to provide skilled or intermediate nursing home care, except as hereinafter authorized:

(a) The department may issue a certificate of need to any person proposing the new construction of any health care facility defined in subparagraphs (iv) and (vi) of Section 41-7-173(h) as part of a life care retirement facility, in any county bordering on the Gulf of Mexico in which is located a National Aeronautics and Space Administration facility, not to exceed forty (40) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the health care facility that were authorized under this paragraph (a).

(b) The department may issue certificates of need in Harrison County to provide skilled nursing home care for Alzheimer's disease patients and other patients, not to exceed one hundred fifty (150) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facilities that were authorized under this paragraph (b).

(c) The department may issue a certificate of need for the addition to or expansion of any skilled nursing facility that is part of an existing continuing care retirement community located in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (c), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of beds that may be authorized under the authority of this paragraph (c) shall not exceed sixty (60) beds.

(d) The State Department of Health may issue a certificate of need to any hospital located in DeSoto County for the new construction of a skilled nursing facility, not to exceed one hundred twenty (120) beds, in DeSoto County. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (d).

(e) The State Department of Health may issue a certificate of need for the construction of a nursing facility or the conversion of beds to nursing facility beds at a personal care facility for the elderly in Lowndes County that is owned and operated by a Mississippi nonprofit corporation, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (e).

(f) The State Department of Health may issue a certificate of need for conversion of a county hospital facility in Itawamba County to a nursing

facility, not to exceed sixty (60) beds, including any necessary construction, renovation or expansion. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (f).

(g) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hinds, Madison or Rankin County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (g).

(h) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hancock, Harrison or Jackson County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the facility that were authorized under this paragraph (h).

(i) The department may issue a certificate of need for the new construction of a skilled nursing facility in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (i), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (i) shall not exceed sixty (60) beds. If the skilled nursing facility authorized by the certificate of need issued under this

paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

(j) The department may issue certificates of need to allow any existing freestanding long-term care facility in Tishomingo County and Hancock County that on July 1, 1995, is licensed with fewer than sixty (60) beds. For the purposes of this paragraph (j), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the long-term care facilities that were authorized under this paragraph (j).

(k) The department may issue a certificate of need for the construction of a nursing facility at a continuing care retirement community in Lowndes County. The total number of beds that may be authorized under the authority of this paragraph (k) shall not exceed sixty (60) beds. From and after July 1, 2001, the prohibition on the facility participating in the Medicaid program (Section 43-13-101 et seq.) that was a condition of issuance of the certificate of need under this paragraph (k) shall be revised as follows: The nursing facility may participate in the Medicaid program from and after July 1, 2001, if the owner of the facility on July 1, 2001, agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than thirty (30) patients in the facility in any month or for any patient in the facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the facility shall be a condition of licensure of the facility, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after July 1, 2001. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the facility for participation in the Medicaid program. If the facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the written agreement.

(*l*) Provided that funds are specifically appropriated therefor by the Legislature, the department may issue a certificate of need to a rehabilitation hospital in Hinds County for the construction of a sixty-bed long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities including persons with spinal cord and closed-head injuries and ventilator dependent patients. The provisions of Section 41-7-

193(1) regarding substantial compliance with projection of need as reported in the current State Health Plan are waived for the purpose of this paragraph.

(m) The State Department of Health may issue a certificate of need to a county-owned hospital in the Second Judicial District of Panola County for the conversion of not more than seventy-two (72) hospital beds to nursing facility beds, provided that the recipient of the certificate of need agrees in writing that none of the beds at the nursing facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement in the nursing facility in any day or for any patient in the nursing facility. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the nursing facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify any of the beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by admitting or keeping in the nursing facility on a regular or continuing basis any patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the nursing facility, at the time that the department determines, after a hearing complying with due process, that the nursing facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(n) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be

fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (n), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (n) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(o) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (o), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the

certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (o) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(p) The department may issue a certificate of need for the construction of a municipally owned nursing facility within the Town of Belmont in Tishomingo County, not to exceed sixty (60) beds, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (p), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. If the certificate of

need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(q)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next four (4) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each county in the state having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, in the manner provided in this paragraph (q). The total number of nursing facility beds that may be authorized by any certificate of need authorized under this paragraph (q) shall not exceed sixty (60) beds.

(ii) Subject to the provisions of subparagraph (v), during each of the next four (4) fiscal years, the department shall issue six (6) certificates of need for new nursing facility beds, as follows: During fiscal years 2000, 2001 and 2002, one (1) certificate of need shall be issued for new nursing facility beds in the county in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan that has the highest need in the district for those beds; and two (2) certificates of need shall be issued for new nursing facility beds in the two (2) counties from the state at large that have the highest need in the state for those beds, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. During fiscal year 2003, one (1) certificate of need shall be issued for new nursing facility beds in any county having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, that has not received a certificate of need under this paragraph (q) during the three (3) previous fiscal years. During fiscal year 2000, in addition to the six (6) certificates of need authorized in this subparagraph, the department also shall issue a certificate of need for new nursing facility beds in Amite County and a certificate of need for new nursing facility beds in Carroll County.

(iii) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in each Long-Term Care Planning District during each fiscal year shall first be available for nursing facility beds in the county in the district having the

highest need for those beds, as shown in the fiscal year 1999 State Health Plan. If there are no applications for a certificate of need for nursing facility beds in the county having the highest need for those beds by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties in the district in descending order of the need for those beds, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county in the district.

(iv) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in the two (2) counties from the state at large during each fiscal year shall first be available for nursing facility beds in the two (2) counties that have the highest need in the state for those beds, as shown in the fiscal year 1999 State Health Plan, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. If there are no applications for a certificate of need for nursing facility beds in either of the two (2) counties having the highest need for those beds on a statewide basis by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties from the state at large in descending order of the need for those beds on a statewide basis, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county from the state at large.

(v) If a certificate of need is authorized to be issued under this paragraph (q) for nursing facility beds in a county on the basis of the need in the Long-Term Care Planning District during any fiscal year of the four-year period, a certificate of need shall not also be available under this paragraph (q) for additional nursing facility beds in that county on the basis of the need in the state at large, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in the state at large for that fiscal year. After a certificate of need has been issued under this paragraph (q) for nursing facility beds in a county during any fiscal year of the four-year period, a certificate of need shall not be available again under this paragraph (q) for additional nursing facility beds in that county during the four-year period, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in succeeding fiscal years.

(vi) If more than one (1) application is made for a certificate of need for nursing home facility beds available under this paragraph (q), in Yalobusha, Newton or Tallahatchie County, and one (1) of the applicants is a county-owned hospital located in the county where the nursing facility beds are available, the department shall give priority to the county-owned hospital in granting the certificate of need if the following conditions are met:

1. The county-owned hospital fully meets all applicable criteria and

standards required to obtain a certificate of need for the nursing facility beds; and

2. The county-owned hospital's qualifications for the certificate of need, as shown in its application and as determined by the department, are at least equal to the qualifications of the other applicants for the certificate of need.

(r)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next two (2) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan, to provide care exclusively to patients with Alzheimer's disease.

(ii) Not more than twenty (20) beds may be authorized by any certificate of need issued under this paragraph (r), and not more than a total of sixty (60) beds may be authorized in any Long-Term Care Planning District by all certificates of need issued under this paragraph (r). However, the total number of beds that may be authorized by all certificates of need issued under this paragraph (r) during any fiscal year shall not exceed one hundred twenty (120) beds, and the total number of beds that may be authorized in any Long-Term Care Planning District during any fiscal year shall not exceed forty (40) beds. Of the certificates of need that are issued for each Long-Term Care Planning District during the next two (2) fiscal years, at least one (1) shall be issued for beds in the northern part of the district, at least one (1) shall be issued for beds in the central part of the district, and at least one (1) shall be issued for beds in the southern part of the district.

(iii) The State Department of Health, in consultation with the Department of Mental Health and the Division of Medicaid, shall develop and prescribe the staffing levels, space requirements and other standards and requirements that must be met with regard to the nursing facility beds authorized under this paragraph (r) to provide care exclusively to patients with Alzheimer's disease.

(s) The State Department of Health may issue a certificate of need to a nonprofit skilled nursing facility using the Green House model of skilled nursing care and located in Yazoo City, Yazoo County, Mississippi, for the construction, expansion or conversion of not more than nineteen (19) nursing facility beds. For purposes of this paragraph (s), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this paragraph (s).

(t) The State Department of Health shall issue certificates of need to the owner of a nursing facility in operation at the time of Hurricane Katrina in Hancock County that was not operational on December 31, 2005, because

of damage sustained from Hurricane Katrina to authorize the following: (i) the construction of a new nursing facility in Harrison County; (ii) the relocation of forty-nine (49) nursing facility beds from the Hancock County facility to the new Harrison County facility; (iii) the establishment of not more than twenty (20) non-Medicaid nursing facility beds at the Hancock County facility; and (iv) the establishment of not more than twenty (20) non-Medicaid beds at the new Harrison County facility. The certificates of need that authorize the non-Medicaid nursing facility beds under subparagraphs (iii) and (iv) of this paragraph (t) shall be subject to the following conditions: The owner of the Hancock County facility and the new Harrison County facility must agree in writing that no more than fifty (50) of the beds at the Hancock County facility and no more than forty-nine (49) of the beds at the Harrison County facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than fifty (50) patients in the Hancock County facility in any month, or for more than forty-nine (49) patients in the Harrison County facility in any month, or for any patient in either facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the nursing facilities shall be a condition of the issuance of the certificates of need under this paragraph (t), and the agreement shall be fully binding on any later owner or owners of either facility if the ownership of either facility is transferred at any time after the certificates of need are issued. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifty (50) of the beds at the Hancock County facility or more than forty-nine (49) of the beds at the Harrison County facility for participation in the Medicaid program. If the Hancock County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifty (50) patients who are participating in the Medicaid program, or if the Harrison County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than forty-nine (49) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility that is in violation of the agreement, at the time that the department determines, after a hearing complying with due process, that the facility has violated the agreement.

(u) The State Department of Health shall issue a certificate of need to a nonprofit venture for the establishment, construction and operation of a skilled nursing facility of not more than sixty (60) beds to provide skilled nursing care for ventilator dependent or otherwise medically dependent pediatric patients who require medical and nursing care or rehabilitation services to be located in a county in which an academic medical center and a children's hospital are located, and for any construction and for the acquisition of equipment related to those beds. The facility shall be authorized to keep such ventilator dependent or otherwise medically dependent pediatric patients beyond age twenty-one (21) in accordance with regula-

tions of the State Board of Health. For purposes of this paragraph (u), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived, and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. The beds authorized by this paragraph shall be counted as pediatric skilled nursing facility beds for health planning purposes under Section 41-7-171 et seq. There shall be no prohibition of or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized by this paragraph.

(3) The State Department of Health may grant approval for and issue certificates of need to any person proposing the new construction of, addition to, conversion of beds of or expansion of any health care facility defined in subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h). The total number of beds which may be authorized by such certificates of need shall not exceed three hundred thirty-four (334) beds for the entire state.

(a) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a privately owned psychiatric residential treatment facility in Simpson County for the conversion of sixteen (16) intermediate care facility for the mentally retarded (ICF-MR) beds to psychiatric residential treatment facility beds, provided that facility agrees in writing that the facility shall give priority for the use of those sixteen (16) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(b) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric residential treatment facility beds in Warren County, not to exceed sixty (60) psychiatric residential treatment facility beds, provided that the facility agrees in writing that no more than thirty (30) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.) for the use of any patients other than those who are participating only in the Medicaid program of another state, and that no claim will be submitted to the Division of Medicaid for Medicaid reimbursement for more than thirty (30) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program for the use of

any patients other than those who are participating only in the Medicaid program of another state. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Mississippi Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

The State Department of Health, on or before July 1, 2002, shall transfer the certificate of need authorized under the authority of this paragraph (b), or reissue the certificate of need if it has expired, to River Region Health System.

(c) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a hospital currently operating Medicaid-certified acute psychiatric beds for adolescents in DeSoto County, for the establishment of a forty-bed psychiatric residential treatment facility in DeSoto County, provided that the hospital agrees in writing (i) that the hospital shall give priority for the use of those forty (40) beds to Mississippi residents who are presently being treated in out-of-state facilities, and (ii) that no more than fifteen (15) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement for more than fifteen (15) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifteen (15) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifteen (15) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

(d) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric treatment facility beds, not to exceed thirty

(30) psychiatric residential treatment facility beds, in either Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw, Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

(e) Of the total number of beds authorized under this subsection (3) the department shall issue a certificate of need to a privately owned, nonprofit psychiatric residential treatment facility in Hinds County for an eight-bed expansion of the facility, provided that the facility agrees in writing that the facility shall give priority for the use of those eight (8) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(f) The department shall issue a certificate of need to a one-hundred-thirty-four-bed specialty hospital located on twenty-nine and forty-four one-hundredths (29.44) commercial acres at 5900 Highway 39 North in Meridian (Lauderdale County), Mississippi, for the addition, construction or expansion of child/adolescent psychiatric residential treatment facility beds in Lauderdale County. As a condition of issuance of the certificate of need under this paragraph, the facility shall give priority in admissions to the child/adolescent psychiatric residential treatment facility beds authorized under this paragraph to patients who otherwise would require out-of-state placement. The Division of Medicaid, in conjunction with the Department of Human Services, shall furnish the facility a list of all out-of-state patients on a quarterly basis. Furthermore, notice shall also be provided to the parent, custodial parent or guardian of each out-of-state patient notifying them of the priority status granted by this paragraph. For purposes of this paragraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of child/adolescent psychiatric residential treatment facility beds that may be authorized under the authority of this paragraph shall be sixty (60) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this paragraph or for the beds converted pursuant to the authority of that certificate of need.

(4)(a) From and after July 1, 1993, the department shall not issue a certificate of need to any person for the new construction of any hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the conversion of any other health care facility to a hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the addition of any child/adolescent psychiatric or child/adolescent chemical dependency beds in any hospital, psychiatric hospital or chemical dependency hospital, or for the conversion of any beds of another category in any hospital, psychiatric hospital or chemical dependency hospital to child/adolescent psychiatric or child/adolescent chemical dependency beds, except as hereinafter authorized:

(i) The department may issue certificates of need to any person for any purpose described in this subsection, provided that the hospital,

psychiatric hospital or chemical dependency hospital does not participate in the Medicaid program (Section 43-13-101 et seq.) at the time of the application for the certificate of need and the owner of the hospital, psychiatric hospital or chemical dependency hospital agrees in writing that the hospital, psychiatric hospital or chemical dependency hospital will not at any time participate in the Medicaid program or admit or keep any patients who are participating in the Medicaid program in the hospital, psychiatric hospital or chemical dependency hospital. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital, psychiatric hospital or chemical dependency hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the hospital, psychiatric hospital or chemical dependency hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (i), and if such hospital, psychiatric hospital or chemical dependency hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the hospital, psychiatric hospital or chemical dependency hospital who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital, psychiatric hospital or chemical dependency hospital, at the time that the department determines, after a hearing complying with due process, that the hospital, psychiatric hospital or chemical dependency hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph (i) and in the written agreement by the recipient of the certificate of need.

(ii) The department may issue a certificate of need for the conversion of existing beds in a county hospital in Choctaw County from acute care beds to child/adolescent chemical dependency beds. For purposes of this subparagraph (ii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(iii) The department may issue a certificate or certificates of need for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in Warren County. For purposes of this subparagraph (iii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph

shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

If by January 1, 2002, there has been no significant commencement of construction of the beds authorized under this subparagraph (iii), or no significant action taken to convert existing beds to the beds authorized under this subparagraph, then the certificate of need that was previously issued under this subparagraph shall expire. If the previously issued certificate of need expires, the department may accept applications for issuance of another certificate of need for the beds authorized under this subparagraph, and may issue a certificate of need to authorize the construction, expansion or conversion of the beds authorized under this subparagraph.

(iv) The department shall issue a certificate of need to the Region 7 Mental Health/Retardation Commission for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in any of the counties served by the commission. For purposes of this subparagraph (iv), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(v) The department may issue a certificate of need to any county hospital located in Leflore County for the construction or expansion of adult psychiatric beds or the conversion of other beds to adult psychiatric beds, not to exceed twenty (20) beds, provided that the recipient of the certificate of need agrees in writing that the adult psychiatric beds will not at any time be certified for participation in the Medicaid program and that the hospital will not admit or keep any patients who are participating in the Medicaid program in any of such adult psychiatric beds. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital if the ownership of the hospital is transferred at any time after the issuance of the certificate of need. Agreement that the adult psychiatric beds will not be certified for participation in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (v), and if such hospital at any time after the issuance of the certificate of need, regardless of the ownership of the hospital, has any of such adult psychiatric beds certified for participation in the Medicaid program or admits or keeps any Medicaid patients in such adult psychiatric beds, the

State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital at the time that the department determines, after a hearing complying with due process, that the hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph and in the written agreement by the recipient of the certificate of need.

(vi) The department may issue a certificate or certificates of need for the expansion of child psychiatric beds or the conversion of other beds to child psychiatric beds at the University of Mississippi Medical Center. For purposes of this subparagraph (vi), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed fifteen (15) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(b) From and after July 1, 1990, no hospital, psychiatric hospital or chemical dependency hospital shall be authorized to add any child/adolescent psychiatric or child/adolescent chemical dependency beds or convert any beds of another category to child/adolescent psychiatric or child/adolescent chemical dependency beds without a certificate of need under the authority of subsection (1)(c) of this section.

(5) The department may issue a certificate of need to a county hospital in Winston County for the conversion of fifteen (15) acute care beds to geriatric psychiatric care beds.

(6) The State Department of Health shall issue a certificate of need to a Mississippi corporation qualified to manage a long-term care hospital as defined in Section 41-7-173(h)(xii) in Harrison County, not to exceed eighty (80) beds, including any necessary renovation or construction required for licensure and certification, provided that the recipient of the certificate of need agrees in writing that the long-term care hospital will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the long-term care hospital who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the long-term care hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the long-term care hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subsection (6), and if such long-term care hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the

certificate of need, if it is still outstanding, and shall deny or revoke the license of the long-term care hospital, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subsection and in the written agreement by the recipient of the certificate of need. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(7) The State Department of Health may issue a certificate of need to any hospital in the state to utilize a portion of its beds for the "swing-bed" concept. Any such hospital must be in conformance with the federal regulations regarding such swing-bed concept at the time it submits its application for a certificate of need to the State Department of Health, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program. Any hospital meeting all federal requirements for participation in the swing-bed program which receives such certificate of need shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such certificate of need shall develop a procedure to insure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient located within a fifty-mile radius of the hospital. When any such hospital has a patient staying in the swing beds of the hospital and the hospital receives notice from a nursing home located within such radius that there is a vacant bed available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital which is subject to the requirements of the two (2) preceding sentences of this subsection may be suspended from participation in the swing-bed program for a reasonable period of time by the State Department of Health if the department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements.

(8) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to or expansion of a health care facility as defined in subparagraph (viii) of Section 41-7-173(h), except as hereinafter provided: The department may issue a certificate of need to a nonprofit corporation located in Madison County, Mississippi, for the construction, expansion or conversion of not more than twenty (20) beds in a community living program for developmentally disabled

adults in a facility as defined in subparagraph (viii) of Section 41-7-173(h). For purposes of this subsection (8), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this subsection (8).

(9) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the establishment of, or expansion of the currently approved territory of, or the contracting to establish a home office, subunit or branch office within the space operated as a health care facility as defined in Section 41-7-173(h)(i) through (viii) by a health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

(10) Health care facilities owned and/or operated by the state or its agencies are exempt from the restraints in this section against issuance of a certificate of need if such addition or expansion consists of repairing or renovation necessary to comply with the state licensure law. This exception shall not apply to the new construction of any building by such state facility. This exception shall not apply to any health care facilities owned and/or operated by counties, municipalities, districts, unincorporated areas, other defined persons, or any combination thereof.

(11) The new construction, renovation or expansion of or addition to any health care facility defined in subparagraph (ii) (psychiatric hospital), subparagraph (iv) (skilled nursing facility), subparagraph (vi) (intermediate care facility), subparagraph (viii) (intermediate care facility for the mentally retarded) and subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h) which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, and the addition of new beds or the conversion of beds from one category to another in any such defined health care facility which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(12) The new construction, renovation or expansion of or addition to any veterans homes or domiciliaries for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(13) The repair or the rebuilding of an existing, operating health care facility that sustained significant damage from a natural disaster that occurred after April 15, 2014, in an area that is proclaimed a disaster area or subject to a state of emergency by the Governor or by the President of the United States shall be exempt from all of the requirements of the Mississippi Certificate of Need Law (Section 41-7-171 et seq.) and any and all rules and regulations promulgated under that law, subject to the following conditions:

(a) The repair or the rebuilding of any such damaged health care facility must be within one (1) mile of the pre-disaster location of the campus

of the damaged health care facility, except that any temporary post-disaster health care facility operating location may be within five (5) miles of the pre-disaster location of the damaged health care facility;

(b) The repair or the rebuilding of the damaged health care facility (i) does not increase or change the complement of its bed capacity that it had before the Governor's or the President's proclamation, (ii) does not increase or change its levels and types of health care services that it provided before the Governor's or the President's proclamation, and (iii) does not rebuild in a different county; however, this paragraph does not restrict or prevent a health care facility from decreasing its bed capacity that it had before the Governor's or the President's proclamation, or from decreasing the levels of or decreasing or eliminating the types of health care services that it provided before the Governor's or the President's proclamation, when the damaged health care facility is repaired or rebuilt;

(c) The exemption from Certificate of Need Law provided under this subsection (13) is valid for only five (5) years from the date of the Governor's or the President's proclamation. If actual construction has not begun within that five-year period, the exemption provided under this subsection is inapplicable; and

(d) The Division of Health Facilities Licensure and Certification of the State Department of Health shall provide the same oversight for the repair or the rebuilding of the damaged health care facility that it provides to all health care facility construction projects in the state.

For the purposes of this subsection (13), "significant damage" to a health care facility means damage to the health care facility requiring an expenditure of at least One Million Dollars ($1,000,000.00).

(14) The State Department of Health shall issue a certificate of need to any hospital which is currently licensed for two hundred fifty (250) or more acute care beds and is located in any general hospital service area not having a comprehensive cancer center, for the establishment and equipping of such a center which provides facilities and services for outpatient radiation oncology therapy, outpatient medical oncology therapy, and appropriate support services including the provision of radiation therapy services. The provisions of Section 41-7-193(1) regarding substantial compliance with the projection of need as reported in the current State Health Plan are waived for the purpose of this subsection.

(15) The State Department of Health may authorize the transfer of hospital beds, not to exceed sixty (60) beds, from the North Panola Community Hospital to the South Panola Community Hospital. The authorization for the transfer of those beds shall be exempt from the certificate of need review process.

(16) The State Department of Health shall issue any certificates of need necessary for Mississippi State University and a public or private health care provider to jointly acquire and operate a linear accelerator and a magnetic resonance imaging unit. Those certificates of need shall cover all capital expenditures related to the project between Mississippi State University and

the health care provider, including, but not limited to, the acquisition of the linear accelerator, the magnetic resonance imaging unit and other radiological modalities; the offering of linear accelerator and magnetic resonance imaging services; and the cost of construction of facilities in which to locate these services. The linear accelerator and the magnetic resonance imaging unit shall be (a) located in the City of Starkville, Oktibbeha County, Mississippi; (b) operated jointly by Mississippi State University and the public or private health care provider selected by Mississippi State University through a request for proposals (RFP) process in which Mississippi State University selects, and the Board of Trustees of State Institutions of Higher Learning approves, the health care provider that makes the best overall proposal; (c) available to Mississippi State University for research purposes two-thirds (2/3) of the time that the linear accelerator and magnetic resonance imaging unit are operational; and (d) available to the public or private health care provider selected by Mississippi State University and approved by the Board of Trustees of State Institutions of Higher Learning one-third (1/3) of the time for clinical, diagnostic and treatment purposes. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(17) The State Department of Health shall issue a certificate of need for the construction of an acute care hospital in Kemper County, not to exceed twenty-five (25) beds, which shall be named the "John C. Stennis Memorial Hospital." In issuing the certificate of need under this subsection, the department shall give priority to a hospital located in Lauderdale County that has two hundred fifteen (215) beds. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person or entity receiving the certificate of need authorized under this subsection or for the beds constructed under the authority of that certificate of need.

(18) The planning, design, construction, renovation, addition, furnishing and equipping of a clinical research unit at any health care facility defined in Section 41-7-173(h) that is under the direction and control of the University of Mississippi Medical Center and located in Jackson, Mississippi, and the addition of new beds or the conversion of beds from one (1) category to another in any such clinical research unit, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(19) [Repealed]

(20) Nothing in this section or in any other provision of Section 41-7-171 et seq. shall prevent any nursing facility from designating an appropriate number of existing beds in the facility as beds for providing care exclusively to patients with Alzheimer's disease.

(21) Nothing in this section or any other provision of Section 41-7-171 et seq. shall prevent any health care facility from the new construction, renova-

tion, conversion or expansion of new beds in the facility designated as intensive care units, negative pressure rooms, or isolation rooms pursuant to the provisions of Sections 41-14-1 through 41-14-11. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived.

HISTORY: Laws, 1979, ch. 451, §§ 9, 27; Laws, 1980, ch. 493, § 5; Laws, 1981, ch. 484, § 14; Laws, 1982, ch. 499, § 1; Laws, 1983, ch. 484, § 5; Laws, 1984, ch. 505; Laws, 1985, ch. 534, § 8; Laws, 1986, ch. 437, § 40; Laws, 1987, ch. 515, § 6; Laws, 1988, ch. 421, § 1; Laws, 1989, ch. 530, § 2; Laws, 1990, ch. 510, § 2; Laws, 1993, ch. 426, § 10; Laws, 1993, ch. 493, § 1; Laws, 1993, ch. 609, § 10; Laws, 1994, ch. 649, § 16; Laws, 1995, ch. 599, § 1; Laws, 1996, ch. 551, § 1; Laws, 1998, ch. 596, § 1; Laws, 1999, ch. 303, § 1; Laws, 1999, ch. 495, § 2; Laws, 1999, ch. 583, § 2; Laws, 2001, ch. 342, § 1; Laws, 2001, ch. 607, § 1; Laws, 2002, ch. 636B, § 6; Laws, 2003, ch. 393, § 2; Laws, 2004, ch. 438, § 1; Laws, 2006, ch. 513, § 1; Laws, 2007, ch. 514, § 21; Laws, 2012, ch. 524, § 14; Laws, 2015, ch. 491, § 1, eff from and after passage; Laws, 2020, ch. 500, § 9 (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

Amendment Notes — The 2020 amendment, effective October 9, 2020, added (21).

CHAPTER 14.

MISSISSIPPI ICU INFRASTRUCTURE ACT

Sec.

41-14-1. Short title.
41-14-3. Establishment and administration of the ICU Infrastructure Program to help hospitals increase treatment capacity related to the COVID-19 pandemic.
41-14-5. Department of Health duties and responsibilities related to governing the administration of the program; allocation of program funds.
41-14-7. ICU Infrastructure Fund created; use of monies; unexpended monies.
41-14-9. Repayment of funds expended for purpose not complying with federal guidelines.
41-14-11. Status report of appropriated funds.

§ 41-14-1. Short title.

This chapter shall be known and may be cited as the "Mississippi ICU Infrastructure Act."

HISTORY: Laws, 2020, ch. 500 § 2, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-3. Establishment and administration of the ICU Infrastructure Program to help hospitals increase treatment capacity related to the COVID-19 pandemic.

In response to the COVID-19 pandemic, the Mississippi Department of Health shall establish and administer the ICU Infrastructure Program for the purpose of providing funds to hospitals to increase treatment capacity related to the COVID-19 pandemic, including adding intensive care units, isolation rooms or negative pressure rooms, and related construction and facilitation costs, but not to include any administrative expenses or costs or any staffing expenses or costs. For the purpose of this section, "related construction and facilitation costs" is defined as allowing funding for intensive care units, negative pressure rooms, or isolation rooms, related medical equipment and any needed HVAC system alterations to accommodate the negative pressure, isolation rooms and intensive care units.

HISTORY: Laws, 2020, ch. 500 § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-5. Department of Health duties and responsibilities related to governing the administration of the program; allocation of program funds.

(1) The Department of Health shall:

(a) Promulgate rules and regulations to govern the administration of the program;

(b) Make every effort to expend the funds appropriated to the program established in this chapter by October 30, 2020;

(c) Require recipients of funds under this program to certify that there is a need to add intensive care units, isolation rooms or negative pressure rooms at the facility receiving funds;

(d) Require recipients of funds under this program to certify that the facility adding intensive care units, isolation rooms or negative pressure rooms can adequately staff such units or rooms; and

(e) Certify to the Department of Finance and Administration that each expenditure of the funds appropriated to the Department of Health under

this chapter is in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.

(2) No individual hospital shall receive more than twenty-five percent (25%) of the funds appropriated to this program.

(3) The Department of Health may retain up to Fifty Thousand Dollars ($50,000.00) of the funds appropriated to the program established in this chapter to pay reasonable expenses incurred in the administration of the program.

(4) Out of the funds appropriated to this program, the Department of Health shall expend twenty percent (20%) or more of such funds for hospitals in Mississippi that are either designated as a Level III Trauma Center or a Level IV Trauma Center.

HISTORY: Laws, 2020, ch. 500, § 4, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-7. ICU Infrastructure Fund created; use of monies; unexpended monies.

(1) There is created a special fund in the State Treasury, to be known as the "ICU Infrastructure Fund," from which the awards authorized under the ICU Infrastructure Program shall be disbursed by the Department of Health.

(2)(a) All monies shall be disbursed from the fund created in subsection (1) of this section in compliance with the guidelines, guidance, rules, regulations or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. However, unexpended amounts of any monies unrelated to the Coronavirus Relief Fund, whether appropriated by the Legislature or donated by any public or private entity, remaining in the funds at the end of a fiscal year shall not lapse into the Budget Contingency Fund or the State General Fund, and any investment earnings or interest earned on amounts in the program fund shall be deposited to the credit of the ICU Infrastructure Fund; and

(b) If on December 15, 2020, there are unexpended Coronavirus Relief Fund monies remaining in the fund created in this section, those funds shall be transferred into the Unemployment Compensation Fund no later than December 30, 2020.

(3) The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General

and the Mississippi Office of the State Auditor. Each person receiving funds under these programs found to be fully or partially noncompliant with the requirements in this chapter shall return to the state all or a portion of the funds received.

HISTORY: Laws, 2020, ch. 500, § 5, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 1, effective October 9, 2020, provides:

"SECTION 1. Upon the effective date of this act, the State Fiscal Officer shall transfer to the "ICU Infrastructure Fund" out of the Budget Contingency Fund..... $ 10,000,000.00."

Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-9. Repayment of funds expended for purpose not complying with federal guidelines.

If the Office of Inspector General of the United States Department of the Treasury, or the Office of Inspector General of any other federal agency having oversight over the use of monies from the Coronavirus Relief Fund established by the CARES Act (a) determines that the Department of Health or recipient has expended or otherwise used any of the funds appropriated to the Department of Health under this chapter for any purpose that is not in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act, and (b) the State of Mississippi is required to repay the federal government for any of those funds that the Office of the Inspector General determined were expended or otherwise used improperly by the Department of Health or recipient, then the Department of Health or recipient that expended or otherwise used those funds improperly shall be required to pay the amount of those funds to the State of Mississippi for repayment to the federal government.

HISTORY: Laws, 2020, ch. 500, § 6, eff from and after passage(became law without the Governor's signature on) (October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-11. Status report of appropriated funds.

On October 15, 2020, the Department of Health shall provide the Lieu-

tenant Governor, the Speaker of the House of Representatives, the Chair of the Senate Public Health and Welfare Committee, and the Chair of the House Public Health and Human Services Committee with a status report of the funds appropriated to it under this chapter. Thereafter, the Department of Health shall report weekly on the status of the funds under this chapter until October 30, 2020 or until the funds under this chapter are fully expended, whichever is later.

HISTORY: Laws, 2020, ch. 500, § 7, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect.""

CHAPTER 29.

POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES

Article 3. Uniform Controlled Substances Law. 41-29-101

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

Sec.

41-29-111. Powers and duties of bureau; regulation of substances.
41-29-121. Schedule V of controlled substances.

§ 41-29-111. Powers and duties of bureau; regulation of substances.

(1) The Commissioner of Public Safety shall administer this article and shall work in conjunction and cooperation with the State Board of Pharmacy, county and municipal law enforcement agencies, the district and county attorneys, the Office of the Attorney General and the Mississippi Bureau of Narcotics. The State Board of Health shall work with the bureau in an advisory capacity and shall be responsible for recommending to the Legislature the appropriate schedule for all substances to be scheduled or rescheduled in Sections 41-29-113 through 41-29-121. In making a recommendation regarding a substance, the State Board of Health shall consider the following:

(a)(i) The actual or relative potential for abuse;

(ii) The scientific evidence of its pharmacological effect, if known;

(iii) The state of current scientific knowledge regarding the substance;

(iv) The history and current pattern of abuse;

(v) The scope, duration and significance of abuse;

(vi) The risk to the public health;

(vii) The potential of the substance to produce psychic or physiological dependence liability; and

(viii) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in paragraph (a), the State Board of Health shall make findings with respect thereto and issue a recommendation to control the substance if it finds the substance has a potential for abuse.

(c) If the State Board of Health designates a substance as an immediate precursor, substances that are precursors of the controlled precursor shall not be recommended for control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, it shall recommend the control of the substance under this article at the next session of the Legislature.

(e)(i) Authority to control under this article does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in the Local Option Alcoholic Beverage Control Law, being Sections 67-1-1 through 67-1-91, and the Tobacco Tax Law of 1934, being Sections 27-69-1 through 27-69-77. It is the intent of the Legislature of the State of Mississippi that the bureau shall concentrate its efforts and resources on the enforcement of the Uniform Controlled Substances Law with respect to illicit narcotic and drug traffic in the state.

(ii) The controlled substances listed in the schedules in Sections 41-29-113 through 41-29-121 are included by whatever official, common, usual, chemical or trade name designated.

(f) The State Board of Health shall recommend the exclusion of any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug and Cosmetic Act and the laws of this state, be lawfully sold over the counter without a prescription.

(2) Any drug that is scheduled on the federal schedule for the purpose of preventing or treating COVID-19 is automatically scheduled on the corresponding state schedule in Sections 41-29-113 through 41-29-121. This automatic scheduling is effective from the date that the COVID-19-related drug is designated on the federal schedule until the effective date of legislation amending the corresponding state schedule in the next regular session of the Legislature.

HISTORY: Codes, 1942, § 6831-55; Laws, 1971, ch. 521, § 5; Laws, 1972, ch. 520, § 4; Laws, 1983, ch. 522, § 13; Laws, 2004, ch. 595, § 19; Laws, 2009, ch. 469, § 3, eff from and after July 1, 2009; Laws, 2020, ch. 497, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (2).

§ 41-29-113. Schedule I of controlled substances [Effective until July 1, 2021].

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
7. "Khat."

1. Constitutionality.

Because the scienter requirement of this section mitigated any vagueness with respect to the failure of it to list "khat" as a controlled substance, defendant failed to meet the burden of proving that this section was unconstitutional. Mohamed v. State, — So. 3d —, 2021 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 20, 2021).

7. "Khat."

Because the evidence showed that the khat recovered from defendant's store and home contained "any quantity" of cathinone, the khat was classified as a Schedule I controlled substance and the trial court did not err in allowing the State's witnesses to repeatedly refer to it as such. Mohamed v. State, — So. 3d —, 2021 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 20, 2021).

§ 41-29-121. Schedule V of controlled substances.

SCHEDULE V

(a) Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. [Reserved]

(c) **Narcotic drugs containing nonnarcotic active medicinal ingredients.** Any compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(2) Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(3) Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(4) Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit;

(5) Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams;

(6) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(d) **Stimulants.** Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains

any quantity of the following substance, including its salts, isomers and salts of isomers: Pyrovalerone.

(e) **Depressants.** Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers and salts of isomers:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact);

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(3) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

(4) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

(f) Any material, compound, mixture or preparation which contains any quantity of a Schedule V controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY: Codes, 1942, § 6831-61; Laws, 1971, ch. 521, § 11; Laws, 1978, ch. 404, § 5; Laws, 1979, ch. 368, § 4; Laws, 1983, ch. 404, § 5; Laws, 1986, ch. 512, § 3; Laws, 1989, ch. 568, § 5; 1995, ch. 443, § 5; Laws, 2006, ch. 416, § 3; Laws, 2008, ch. 491, § 5; Laws, 2011, ch. 449, § 4; Laws, 2013, ch. 378, § 2; Laws, 2017, ch. 394, § 5, eff from and after July 1, 2017; Laws, 2020, ch. 497, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment deleted former (f), which read: "**Approved cannabidiol drugs.** A drug product in finished dosage formulation that has been approved by the United States Food and Drug Administration that contains cannabidiol (2-R-3-methyl-6R-1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols"; and redesignated former (g) as (f).

§ 41-29-139. Prohibited acts; penalties.

JUDICIAL DECISIONS

III. PROSECUTION; PROCEDURE.

16. Jury instructions.

Defendant was entitled to reversal of his conviction for selling methamphetamine because the jury was not instructed on an essential element of the charged crime where the instruction omitted the essential element that defendant knowingly and intentionally sold a controlled substance. Jennings v. State, 311 So. 3d 712, 2021 Miss. App. LEXIS 61 (Miss. Ct. App. 2021).

§ 41-29-147. Second and subsequent offenses.

JUDICIAL DECISIONS

2. Sentence.

Defendant's concurrent and consecutive maximum enhanced sentences for possession of schedule I and II controlled substances with intent to sell, conspiracy to sell a schedule I controlled substance, and possession of a fire-

arm by a felon were not grossly excessive and disproportionate to the crimes because defendant was adjudicated a non-violent habitual offender due to defendant's prior conviction for possession of marijuana and the circuit court did not abuse its discretion by applying the subsequent drug offender enhancement. Williams v. State, — So. 3d —, 2021 Miss. App. LEXIS 194 (Miss. Ct. App. May 4, 2021).

TITLE 43.

PUBLIC WELFARE

CHAPTER 13.

MEDICAL ASSISTANCE FOR THE AGED; MEDICAID

ARTICLE 3.

MEDICAID.

§ 43-13-121. Authority to administer article.

JUDICIAL DECISIONS

1. In general.

Chancery court erred in upholding a decision by the Mississippi Division of Medicaid (DOM) in calculating the statutorily imposed annual hospital assessment for the fiscal year 2017 because DOM was responsible for seeking approval from the Governor and adhering to the Administrative Procedures Law for any new rules it wished to implement where no method for allocation of an assessment shortfall resulting from a hospital closing mid-fiscal year had been set forth, and DOM's implementation of a new rule regarding the Hospital Assessment was beyond its power and could not stand. St. Dominic-Jackson Mem. Hosp. v. Miss. Division of Medicaid, — So. 3d —, 2020 Miss. App. LEXIS 638 (Miss. Ct. App. Nov. 24, 2020).

§ 43-13-145. Assessment levied upon health care facilities; keeping of records; collection of assessments; effect of delinquency in payment [Subsections (4) and (10) through (15) repealed effective July 1, 2024].

JUDICIAL DECISIONS

2. Calculation of hospital assessment.

Chancery court erred in upholding a decision by the Mississippi Division of Medicaid (DOM) in calculating the statutorily imposed annual hospital assessment for the fiscal year 2017 because DOM was responsible for seeking approval from the Governor and adhering to the Administrative Procedures Law for any new rules it wished to implement where no method for allocation of an assessment shortfall resulting from a hospital closing mid-fiscal year had been set forth, and DOM's implementation of a new rule regarding the Hospital Assessment was beyond its power and could not stand. St. Dominic-Jackson Mem. Hosp. v. Miss. Division of Medicaid, — So. 3d —, 2020 Miss. App. LEXIS 638 (Miss. Ct. App. Nov. 24, 2020).

CHAPTER 19.

SUPPORT OF NATURAL CHILDREN

CHILD SUPPORT UNIT

§ 43-19-34. Stipulated agreement for modification of support order; Child Support Unit authorized to send motion and notice of intent to modify; reviews for possible modification to be conducted on 3-year cycle; only upward adjustments to be ordered retroactively; noncustodial parent's arrearage not to bar review or downward modification.

JUDICIAL DECISIONS

3. Retroactive downward modification of support.

Chancellor did not err in denying a husband a downward retroactive modification of child support payments because a downward retroactive modification of child support payments was statutorily prohibited. Furthermore, based on the husband's conduct, the appellate court did not believe that the husband was deserving of relief as it was the husband who requested a delay and the chancellor held the husband in contempt based on the husband's unilateral choice not to pay the full amount of court-ordered child support. Lacoste v. Lacoste, — So. 3d —, 2021 Miss. App. LEXIS 130 (Miss. Ct. App. Mar. 30, 2021).

CHILD SUPPORT AWARD GUIDELINES

§ 43-19-101. Child support award guidelines.

JUDICIAL DECISIONS

3. Guidelines; adherence to.

Because the chancery court conducted a thorough analysis of its child support award pursuant to the statute on the record and within its written decree of divorce, there was no error in the award of child support; the chancery court discussed in detail the trial testimony, both parties' financial statements, the expenses of the children, their accustomed lifestyle to validate its compliance with the statute, and the reasonableness of the child-support award. Lageman v. Lageman, — So. 3d —, 2021 Miss. App. LEXIS 127 (Miss. Ct. App. Mar. 23, 2021).

CHAPTER 21.
YOUTH COURT

ORGANIZATION, ADMINISTRATION AND OPERATION

§ 43-21-105. Definitions.

JUDICIAL DECISIONS

I. Under Current Law.

6. Neglected.

Youth court properly entered a neglect adjudication for a father's children and amended the permanency plan for the children from reunification with their father to durable legal custody with their maternal grandfather, because, inter alia, the father did not comply with the appellate time limits, he was unfit and unable to care for his children as a result of his addiction to opiates, did not comply with the recommendations of the drug court to remedy the problem, and the grandfather was the only relative who had exercised physical custody of the child for at least six months. McCoy v. Adams Cty. Youth Court (in re M.M.), — So. 3d —, 2021 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 16, 2021).

JURISDICTION

§ 43-21-151. Jurisdiction.

JUDICIAL DECISIONS

I. Under Current Law.

4. Original jurisdiction.

Chancery court had jurisdiction over the modification of custody action, and the chancellor did not err by addressing the alleged abuse in the course of adjudicating the custody action because the Department of Child Protection Services investigated the alleged abuse, and a forensic interview was conducted, but the matter was never referred to the youth court; and the chancery court had made an initial custody determination just three months prior to the parties' filing of competing complaints for modification of custody. Davis v. Davis, — So. 3d —, 2021 Miss. App. LEXIS 93 (Miss. Ct. App. Feb. 22, 2021).

DISPOSITION

§ 43-21-603. Disposition hearing procedure.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Youth court properly adjudicated a child as abused and neglected under the doctrine of anticipatory neglect, found that reunification efforts were not necessary, and approved a permanency plan of termination of parental rights and adoption because aggravated circumstances existed regarding the treatment of the child's siblings by her parents, there was no statutory requirement that a motion be made, orally or in writing, prior to a youth court's finding of aggravated circumstances, the mother entered a plea of no contest to the allegations against the other two siblings, and the youth court had statutory authority to make such a determination at the disposition hearing. K.F.M. v. Jackson Cty. Youth Court (In the Interest of K.M.), — So. 3d —, 2020 Miss. App. LEXIS 663 (Miss. Ct. App. Dec. 1, 2020).

TITLE 47.

PRISONS AND PRISONERS; PROBATION AND PAROLE

CHAPTER 5.

CORRECTIONAL SYSTEM

ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES, NARCOTIC DRUGS, WEAPONS, AND OTHER CONTRABAND

§ 47-5-198. Sale, possession, or use of controlled substances or narcotic drugs within facilities; knowledge by employees; punishment for violations.

JUDICIAL DECISIONS

5. Sentence.

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because even if his sentence for possession of a controlled substance in a correctional facility was "illegal" in any way, he failed to demonstrate that his fundamental rights were violated by the circuit court's imposition of that sentence; given the sentence's more lenient terms, appellant did not suffer any fundamental unfairness from the illegal sentence, nor were his fundamental rights violated. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his sentence for possession of a controlled substance while incarcerated was plainly more lenient than what a legal sentence would have been, and thus, any purported error on the circuit court's part in imposing appellant's sentence was harmless. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his ineffective assistance of counsel claim on the ground that counsel failed to object to his sentence was without merit; appellant was not prejudiced by the circuit court's imposing a more lenient sentence for his conviction for possession of a controlled substance while incarcerated, and appellant's ineffective assistance of counsel allegations were supported only by his own affidavit. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

CHAPTER 7.

PROBATION AND PAROLE

PROBATION AND PAROLE LAW

§ 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date [Effective until July 1, 2021].

JUDICIAL DECISIONS

ANALYSIS

5. Change in law, regulation, or interpretation; ex post facto effect.
8. Miscellaneous.

5. Change in law, regulation, or interpretation; ex post facto effect.

There was no merit to defendant's argument that the trial court applied an ex post facto law because the trial court erroneously stated that Miss. Code Ann. § 47-7-3(1)(g)(i) was enacted in 2016, but it actually went into effect on July 1, 2014, the date defendant pleaded guilty. Hardison v. State, — So. 3d —, 2021 Miss. App. LEXIS 180 (Miss. Ct. App. Apr. 27, 2021).

Even though the court found that defendant was not parole eligible because he was convicted of two crimes of violence under Miss. Code Ann. § 97-3-2(1), the State conceded that defense counsel's advice regarding parole eligibility was erroneous, as counsel stated at the plea hearing that defendant would be eligible for early release if he met certain other criteria during his incarceration, and therefore the court remanded the case to the trial court for an evidentiary hearing on the voluntariness of defendant's guilty plea. Hardison v. State, — So. 3d —, 2021 Miss. App. LEXIS 180 (Miss. Ct. App. Apr. 27, 2021).

8. Miscellaneous.

Circuit court applied the correct legal standard and appropriately considered all of the Miller v. Alabama factors, and defendant juvenile's sentence of life without parole for murder was affirmed; substantial evidence supported the circuit court's findings, including that the crime was jointly planned and executed and there did not appear to be any coercion or peer pressure involved. While defendant made a number of efforts to rehabilitate himself while incarcerated, the circuit court found there was not enough evidence to support a weighing in favor of parole. Dotson v. State, — So. 3d —, 2021 Miss. App. LEXIS 73 (Miss. Ct. App. Feb. 23, 2021).

Circuit court correctly determined that defendant was ineligible for parole because the Mississippi Supreme Court clearly resolved the exact issue presented on appeal in Fogleman v. State, 283 So. 3d 685 (Miss. 2019), defendant pled guilty to attempted murder, which was listed as a crime of violence, and whether the decision in Fogleman should be overruled was a decision reserved solely for the Supreme Court. Gava-Hudson v. State, — So. 3d —, 2021 Miss. App. LEXIS 39 (Miss. Ct. App. Jan. 26, 2021).

§ 47-7-34. Postrelease supervision program.

JUDICIAL DECISIONS

5. Propriety of particular sentences.

Circuit court acted appropriately in sentencing defendant to a term of ten years in custody with four years suspended, following defendant's conviction for shooting into a dwelling house, because the sentence did not exceed the maximum statutory penalty, and, although defendant was placed on five years of supervised probation, those years were not included in the calculation of the sentence. Dorsey v. State, 310 So. 3d 1238, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. 2021).

TITLE 57.

PLANNING, RESEARCH AND DEVELOPMENT

Chapter 1. Mississippi Development Authority. 57-1-1

CHAPTER 1.

MISSISSIPPI DEVELOPMENT AUTHORITY

Rental Assistance Grant Program. 57-1-521

RENTAL ASSISTANCE GRANT PROGRAM

Sec.

57-1-521. Rental Assistance Grant Program established; definitions; purpose; program terms and conditions; Rental Assistance Grant Program Fund created; unobligated monies.

§ 57-1-521. Rental Assistance Grant Program established; definitions; purpose; program terms and conditions; Rental Assistance Grant Program Fund created; unobligated monies

(1) As used in this section, the following terms shall have the meanings ascribed unless the context otherwise requires:

(a) "COVID-19" means the Coronavirus Disease 2019.

(b) "CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act.

(c) "MDA" means the Mississippi Development Authority.

(d) "Eligible rental business" means a for-profit or not-for-profit corporation, a limited liability company, a partnership or a sole proprietorship that (i) is the owner, lessor, or sublessor of a dwelling unit, commercial building or the building of which it is a part in the State of Mississippi, and (ii) filed Mississippi taxes for tax year 2018 or 2019, or, for an eligible business formed on or after January 1, 2020, intends to file Mississippi taxes for tax year 2020, unless exempt under Section 27-7-29, Section 27-13-63 or other applicable provision of law.

(e) "Lost rental income" means all payments that were due under a rental agreement to be made to an eligible rental business between March 1, 2020, and December 30, 2020, that were not paid due to the business disruption effects of the public health emergency and eviction moratoria.

(2)(a) The Legislature finds and declares that the public health emergency from COVID-19 has caused increased unemployment and wage insecurity in Mississippi, which has made it difficult for many renters to make their rent payments and puts some at risk of becoming homeless, which could mean greater risk of contracting and spreading the coronavirus

for families. Further, the Legislature finds and declares that increasing nonpayment of rent is creating a crisis for independent rental businesses and a rising danger of foreclosures. The Legislature further finds and declares that the federal and state eviction moratoria that began in March 2020, and will extend through December 30, 2020, have put rental businesses at risk of losing income necessary to continue their business operations.

(b) Eligible rental businesses that can demonstrate lost rental income from March 1, 2020, through December 30, 2020, may apply for a grant of up to Thirty Thousand Dollars ($30,000.00) to reimburse for lost rental income resulting from the public health emergency and eviction moratoria.

(3)(a) The MDA shall establish the Rental Assistance Grant Program for the purpose of making grants to eligible rental businesses pursuant to applications submitted under this subsection, to reimburse their lost rental income.

(b) Any eligible rental business desiring to participate in the grant program authorized under this section shall make application for a grant to the MDA in a form satisfactory to the MDA. The application shall include verified documentation, signed under penalty of perjury. The MDA shall not consider applications filed after November 15, 2020. If the MDA determines that allowing applicants to file their applications until November 15, 2020, would not allow the MDA sufficient time to issue all final payments on or before December 14, 2020, the MDA shall set an application deadline before November 15, 2020, to allow the MDA sufficient time to issue all final payments not later than December 14, 2020.

(c) The MDA shall not disburse any funds appropriated under this section to any recipient without first: (a) making an individualized determination that the reimbursement sought is, in the MDA's independent judgment, for necessary expenditures incurred due to the public health emergency with respect to COVID-19 as provided under Section 601(d) of the federal Social Security Act as added by Section 5001 of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and its implementing guidelines, guidance, rules, regulations and/or other criteria, as may be amended or supplemented from time to time, by the United States Department of the Treasury; and (b) determining that the recipient has not received and will not receive reimbursement for the expense in question from any source of funds, including insurance proceeds, other than those funds provided under Section 601 of the federal Social Security Act as added by Section 5001 of the CARES Act. In addition, the MDA shall ensure that all funds appropriated under this section are disbursed in compliance with the Single Audit Act (31 USC Sections 7501-7507) and the related provisions of the Uniform Guidance, 2 CFR Section 200.303 regarding internal controls, Sections 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

The use of grants shall further be subject to audit by the Mississippi Office of the State Auditor. A rental business found to be fully or partially

noncompliant with grant requirements shall return to the state all or a portion of the grant monies received. Applicants shall confirm their understanding of these terms.

(d) The MDA shall develop procedures, guidelines and application forms to govern the administration of the grant program authorized under this section.

(4) The grant program authorized under this section shall be subject to the following terms and conditions:

(a) The maximum amount of a grant that may be provided to an eligible rental business is Thirty Thousand Dollars ($30,000.00). Eligible commercial businesses shall not receive more than twenty-five percent (25%) of the total funds appropriated under this program.

(b) An eligible rental business that accepts a grant under this section shall consider any rental payments due under a rental agreement at the property for which the grant is made as having been paid in full through December 30, 2020. An eligible rental business that accepts a grant under this section may not evict a tenant from the dwelling unit for nonpayment of rent that accrued between March 1, 2020, and December 30, 2020. Acceptance of grant funds does not prohibit an eligible rental business from beginning eviction proceedings for lawful purposes other than nonpayment of rent that accrued between March 1, 2020, and December 30, 2020, when allowed by law or regulation.

(c) Grants awarded under this section shall be protected from creditors.

(5) There is created a special fund in the State Treasury, to be known as the "Rental Assistance Grant Program Fund," from which the grants authorized by this section shall be disbursed by the MDA. All monies shall be disbursed from the fund in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. If on December 15, 2020, there are unobligated monies in the fund, the MDA shall transfer such monies to the Unemployment Compensation Fund.

HISTORY: Laws, 2020, ch. 503, § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 503, § 1, effective October 9, 2020, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rental Assistance Grant Program."

Laws of 2020, ch. 503, § 2, effective October 9, 2020, provides:

"SECTION 2. Upon the effective date of this act, the State Fiscal Officer shall transfer to the Rental Assistance Grant Program Fund created by Section 2 of this act out of the Budget Contingency Fund (Fund Number 6117700000).....$ 20,000,000.00."

Laws of 2020, ch. 503, § 5, effective October 9, 2020, provides:

"SECTION 5. Section 4 of this act shall take effect and be in force from and after January 1, 2020, and the remainder of this act shall take effect and be in force from and after its passage [October 9, 2020]."

TITLE 63.

MOTOR VEHICLES AND TRAFFIC REGULATIONS

CHAPTER 3.

TRAFFIC REGULATIONS AND RULES OF THE ROAD

ARTICLE 9.

ACCIDENTS AND REPORTS.

§ 63-3-401. Duties of driver involved in accident resulting in personal injury or death; offenses and penalties.

JUDICIAL DECISIONS

3. Illustrative cases.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway. Furthermore, the truck driver's failure to stop after the accident in no way proximately caused or contributed to the accident or was evidence of the truck driver's guilt. Owens v. Brooks, — So. 3d —, 2021 Miss. App. LEXIS 24 (Miss. Ct. App. Jan. 12, 2021).

ARTICLE 11.

RESTRICTIONS ON SPEED; USE OF RADAR.

§ 63-3-505. Conditions under which speed must be decreased.

JUDICIAL DECISIONS

1. In general.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway because the truck driver was not required to slow down to let the motorist pass the truck driver. Even assuming that the accident created a special hazard, the truck driver's failure to slow down after the accident occurred in no way caused or contributed to the accident or exhibited negligence by the truck driver. Owens v. Brooks, — So. 3d —, 2021 Miss. App. LEXIS 24 (Miss. Ct. App. Jan. 12, 2021).

ARTICLE 13.

DRIVING ON RIGHT SIDE OF ROADWAY: OVERTAKING AND PASSING; FOLLOWING.

§ 63-3-617. Driving in center of highway; refusal to turn to right to allow overtaking vehicle to pass.

JUDICIAL DECISIONS

2. Liability for auto accident.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway because the truck driver had no duty to pull off the roadway. The fact that the truck driver may have had room to pull over did not create a duty when none existed and, given the steep drop-off to the right and the driver's heavy load, it could not be said that the truck driver failed to exercise reasonable care by not pulling onto the partially paved shoulder. Owens v. Brooks, — So. 3d —, 2021 Miss. App. LEXIS 24 (Miss. Ct. App. Jan. 12, 2021).

ARTICLE 25.

RECKLESS OR CARELESS DRIVING AND MISCELLANEOUS RULES.

§ 63-3-1201. Reckless driving.

JUDICIAL DECISIONS

5. Miscellaneous.

Circuit court abused its discretion by implicitly allowing a volunteer firefighter to amend his answer when it granted his motion for summary judgment based upon a qualified immunity defense under the Mississippi Tort Claims Act in a driver's action alleging he was negligent per se for violating the statute because he waived the defense; the firefighter raised a qualified immunity affirmative fourteen months after he filed his answer, and no extreme and unusual circumstances warranted his delay. Cook v. Taylor, — So. 3d —, 2021 Miss. App. LEXIS 81 (Miss. Ct. App. Feb. 22, 2021).

TITLE 65.
HIGHWAYS, BRIDGES AND FERRIES
CHAPTER 1.
TRANSPORTATION DEPARTMENT
ARTICLE 1.
IN GENERAL.

§ 65-1-65. Maintenance.

JUDICIAL DECISIONS

3. Causation.

In a case in which two riders on a parade float filed suit against the Mississippi Department of Transportation (MDOT) claiming damages from a low-hanging tree limb, the appellate court concluded that there was no proof MDOT breached its ministerial duty to maintain highways or that a breach proximately caused harm to the riders. Even if the appellate court assumed highway inspections were deficient, there was no evidence to causally link a breach to the injuries suffered by the riders. Calhoun v. Miss. Transp. Comm'n, — So. 3d —, 2021 Miss. App. LEXIS 135 (Miss. Ct. App. Mar. 30, 2021).

TITLE 69.

AGRICULTURE, HORTICULTURE, AND ANIMALS

Chapter 55. Mississippi Agriculture Stabilization Act. 69-55-1

CHAPTER 55.

MISSISSIPPI AGRICULTURE STABILIZATION ACT.

Sec.

69-55-1. Short title.
69-55-3. Establishment of the Poultry Farmer Stabilization Grant Program, the Mississippi Supplemental CFAP Grant Program, and the Sweet Potato Farm Sustainment Grant Program; purpose.
69-55-5. Department of Agriculture to implement regulations and develop procedures for administration and eligibility requirements of programs; administrative expenses; contract with entity to administer programs.
69-55-7. Creation of the Poultry Farmer Stabilization Grant Program Fund, the Mississippi Supplemental CFAP Grant Program Fund, and the Sweet Potato Farm Sustainment Grant Program Fund; use of funds; unexpended monies.
69-55-9. Report on utilization of program.

§ 69-55-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Agriculture Stabilization Act."

HISTORY: Laws, 2020, ch. 498, § 2, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides:
"SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-3. Establishment of the Poultry Farmer Stabilization Grant Program, the Mississippi Supplemental CFAP Grant Program, and the Sweet Potato Farm Sustainment Grant Program; purpose.

In response to the COVID-19 pandemic, the Mississippi Department of Agriculture and Commerce shall establish and administer the following grant programs:

(a) The Poultry Farmer Stabilization Grant Program for the purpose of assisting Mississippi poultry farmers who have experienced a loss of at least one (1) full flock of production due to the COVID-19 pandemic;

(b) The Mississippi Supplemental CFAP Grant Program for the purpose of assisting commodity producers who qualified for the USDA's Coronavirus Food Assistance Program (CFAP); and

(c) The Sweet Potato Farm Sustainment Grant Program for the purpose of providing grants to sweet potato farmers to cover expenses due to the COVID-19 pandemic.

HISTORY: Laws, 2020, ch. 498, § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: "SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-5. Department of Agriculture to implement regulations and develop procedures for administration and eligibility requirements of programs; administrative expenses; contract with entity to administer programs.

(1) The Department of Agriculture and Commerce shall implement regulations and develop procedures to govern the administration and eligibility requirements of the programs established in this chapter.

(2) The department may:

(a) Retain up to three percent (3%) of the funds appropriated to the programs established in this chapter to pay reasonable expenses incurred in the administration of the programs.

(b) Contract with an entity to administer the programs established in this chapter. When contracting with the entity to administer the programs, the department shall be exempt from Section 27-104-7(2)(g) requiring approval by the Public Procurement Review Board.

HISTORY: Laws, 2020, ch. 498, § 4, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: "SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-7. Creation of the Poultry Farmer Stabilization Grant Program Fund, the Mississippi Supplemental CFAP Grant Program Fund, and the Sweet Potato Farm Sustainment Grant Program Fund; use of funds; unexpended monies.

(1)(a) There is created a special fund in the State Treasury, to be known as the "Poultry Farmer Stabilization Grant Program Fund," from which the grants authorized under the Poultry Farmer Stabilization Grant Program shall be disbursed by the Department of Agriculture and Commerce;

(b) There is created a special fund in the State Treasury, to be known as the "Mississippi Supplemental CFAP Grant Program Fund," from which the grants authorized under the Mississippi Supplemental CFAP Grant Program shall be disbursed by the Department of Agriculture and Commerce; and

(c) There is created a special fund in the State Treasury, to be known as the "Sweet Potato Farm Sustainment Grant Program Fund," from which the grants authorized under the Sweet Potato Farm Sustainment Grant Program shall be disbursed by the Department of Agriculture and Commerce.

(2)(a) All monies shall be disbursed from the funds created in subsection (1) of this section in compliance with the guidelines, guidance, rules, regulations or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. However, unexpended amounts of any monies unrelated to the Coronavirus Relief Fund, whether appropriated by the Legislature or donated by any public or private entity, remaining in the funds at the end of a fiscal year shall not lapse into the Budget Contingency Fund or the State General Fund, and any investment earnings or interest earned on amounts in the grant program funds shall be deposited to the credit of the respective grant program fund; and

(b) If on December 15, 2020, there are unexpended Coronavirus Relief Fund monies remaining in any fund created in this section, those funds shall be transferred by the State Fiscal Officer into the Unemployment Compensation Fund no later than December 30, 2020.

(3) The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each person receiving funds under these programs found to be fully or partially noncompliant with the requirements in this chapter shall return to the state all or a portion of the funds received.

HISTORY: Laws, 2020, ch. 498, § 5, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — The reference to "funds allocated under this program" in subsection (3) should probably be to "funds allocated under these programs." The

section is set out above as enacted by Chapter 498, Laws of 2020.

Laws of 2020, ch. 498, § 1, effective October 9, 2020, provides:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Poultry Farmer Stabilization Grant Program Fund' out of the Budget Contingency Fund..... $3,000,000.00.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Mississippi Supplemental CFAP Grant Program Fund' out of the Budget Contingency Fund ..... $9,500,000.00.

"(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Sweet Potato Farm Sustainment Grant Program Fund' out of the Budget Contingency Fund..... $500,000.00."

Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides:

"SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-9. Report on utilization of program.

The Department of Agriculture and Commerce shall report on the utilization of the programs to the Chair of the Agriculture Committees of the Senate and the House of Representatives, the Lieutenant Governor, the Speaker of the House and the Governor by December 15, 2020. At a minimum, the report shall contain:

(a) The name of each grant participant; and

(b) The total amount of payment received by each participant.

HISTORY: Laws, 2020, ch. 498, § 6, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides:

"SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

TITLE 71.
LABOR AND INDUSTRY
CHAPTER 3.
WORKERS' COMPENSATION
GENERAL PROVISIONS

§ 71-3-3. Definitions.

JUDICIAL DECISIONS

23. Injury, generally.

24. — Caused by co-employees.

Mississippi Gaming Commission was entitled to summary judgment under the exclusive remedy provision of the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-1 et seq., because a finder of fact could not have concluded that a certified firearms instructor with the Mississippi Gaming Commission possessed actual intent to injure the decedent when the instructor shot and killed the decedent, who was also an instructor with the Commission, during a firearm-training exercise. In the Estate of Gorman v. State, 307 So. 3d 421, 2020 Miss. LEXIS 506 (Miss. 2020).

§ 71-3-7. Liability for payment of compensation.

JUDICIAL DECISIONS

ANALYSIS

10. —Going to or returning from work.
30. Pre-existing disease or infirmity.
34. —Apportionment.
36. — — Not required.
43. Liability of contractors and subcontractors.

10. —Going to or returning from work.

Workers' Compensation Commission did not err in affirming the denial of an employee's workers' compensation benefits because he was not a "traveling employee" since he could not show that his facts fell in the exceptions to the "going and coming" rule where, inter alia, the employer did not pay for his traveling time, did not dictate the route he took, did not provide meals, the employee was driving his own vehicle, the employer did not reimburse him for mileage, he was not injured due to a hazard on his regular route that he, not the employer, chose, he was not paid for his commute, he had not been ordered by the employer to carry the tools to and from work, and the employer gained nothing from his commute. Lambert v. Energy Drilling Co., — So. 3d —, 2021 Miss. App. LEXIS 114 (Miss. Ct. App. Mar. 16, 2021).

30. Pre-existing disease or infirmity.

34. —Apportionment.

36. — — Not required.

ALJ did not err in finding that apportionment was not applicable because there was no showing of previous permanent impairment to claimant's left shoulder, and the benefits awarded were not based on any other previous impairments she may have had to other parts of her body. Eichhorn v. Kroger Co., — So. 3d —, 2021 Miss. App. LEXIS 166 (Miss. Ct. App. Apr. 13, 2021).

43. Liability of contractors and subcontractors.

Sheriff's department was not a statutory employer because the county contracted directly with a health care provider to provide comprehensive medical care for inmates and neither the county, nor the sheriff's department had a contract with anyone else when a nurse who was hired by the provider was injured in the course of the nurse's duties at a detention

center and the provider did not carry workers' compensation coverage at the time. Rollins v. Hinds Cty. Sheriff's Dep't & Miss. Pub. Entities' Workers' Cpmpensation Trust, 306 So. 3d 702, 2020 Miss. LEXIS 482 (Miss. 2020).

§ 71-3-15. Medical services and supplies.

JUDICIAL DECISIONS

8. Patient-physician communication privilege.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., 309 So. 3d 1135, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. 2021).

§ 71-3-17. Compensation for disability.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
11. Amount of recovery.

1. In general.

Doctor's testimony that the worker's repetitive work activity was a "possible" cause of her injury, when coupled with evidence that a stress fracture was not caused by a specific event and the worker's testimony that she did not engage in other repetitive-type activities, was sufficient to sustain a compensability finding; the employer did not present any credible evidence, medical or lay, pointing to any alternative cause of the worker's injury. Cooper Tire & Rubber Co. v. Loveless, 312 So. 3d 395, 2021 Miss. App. LEXIS 75 (Miss. Ct. App. 2021).

11. Amount of recovery.

In a case in which the claimant was awarded permanent partial disability benefits for his work-related injury, the Mississippi Workers' Compensation Commission's award of $81.38 per week for 450 weeks was proper as the claimant sustained a 20% loss of wage-earning capacity compared to his stipulated pre-injury average weekly wage; and the Commission's calculations equated to $610.35 x 20% = 122.07 x .6667 = $81.38. Chambers v. Howard Indus., 310 So. 3d 833, 2021 Miss. App. LEXIS 13 (Miss. Ct. App. 2021).

§ 71-3-53. Continuing jurisdiction of the commission.

JUDICIAL DECISIONS

3. Limitations period, generally.

7. Applicability.

motion to enforce the Workers' Compensation Commission's compromise settlement order was not barred by the one-year statute of limitations in this section, because the claimant did not claim additional benefits or future benefits but only sought to enforce the Commissioner's previous order approving the settlement in which the insurer agreed to pay the benefits the claimant sought to have paid. Cleveland v. Advance Auto Parts, 305 So. 3d 1144, 2020 Miss. LEXIS 441 (Miss. 2020).

§ 71-3-55. Procedure before the commission.

JUDICIAL DECISIONS

3. Evidence.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., 309 So. 3d 1135, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. 2021).

§ 71-3-59. Costs in proceedings brought without reasonable ground; penalties for pursuit of frivolous claim.

JUDICIAL DECISIONS

1. Penalties or interest.

Workers' Compensation Commission order imposing sanctions on the employer and insurer was reversed where they had at least a colorable legal basis for their appeal, i.e., that septic and HVAC systems were not other apparatus that was specially required by the nature of the claimant's injury. Gamma Healthcare Inc. v. Estate of Grantham, — So. 3d —, 2020 Miss. App. LEXIS 666 (Miss. Ct. App. Dec. 1, 2020).

CHAPTER 5.

UNEMPLOYMENT COMPENSATION

ARTICLE 11.

BENEFITS.

§ 71-5-513. Disqualifications [Repealed effective July 1, 2023].

JUDICIAL DECISIONS

ANALYSIS

5. Leaving employment without good cause.
7. Misconduct discharge, generally.

5. Leaving employment without good cause.

Circuit court properly affirmed a decision by the Mississippi Department of Employment Security denying unemployment benefits to an employee because she voluntarily quit her job after five days without good cause—she did not agree with the employer's offer letter—no evidence was provided regarding how the employee's living expenses were impacted by her alleged salary reduction, and, while possibly inappropriate, the employer's comments about the employee's past domestic violence incident did not constitute good cause to leave her employment since the incident was a matter of public record. Patterson v. Miss. Dep't of Empl. Sec., — So. 3d —, 2021 Miss. App. LEXIS 8 (Miss. Ct. App. Jan. 5, 2021).

7. Misconduct discharge, generally.

In a case in which a claimant appealed from a county circuit court's judgment affirming a Board of Review's decision to deny him unemployment benefits, the appellate court found no error. The Board's finding that the claimant had committed misconduct for his fifth violation of sleeping on the job after receiving two verbal warnings and two written warnings for sleeping on the job was supported by substantial evidence and was not arbitrary or capricious or contrary to law. Woods v. Miss. Dep't of

Empl. Sec., — So. 3d —, 2021 Miss. App. LEXIS 112 (Miss. Ct. App. Mar. 16, 2021).

TITLE 75.

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 24.

REGULATION OF BUSINESS FOR CONSUMER PROTECTION

GENERAL PROVISIONS

§ 75-24-5. Prohibited acts or practices.

JUDICIAL DECISIONS

ANALYSIS

3. Injunctive relief.
5.3. Warning labels.

3. Injunctive relief.

Chancery court properly denied a student loan servicer's motion to dismiss for failure to state a claim because the State alleged facts that supported the danger of a present or future unfair trade practice warranting injunctive relief to protect the public's interest; the servicer had suffered no consequences, and it remained active in its practice with infinitely more potential to reenter the business of loan origination. Navient Corp. v. State ex rel. Fitch, — So. 3d —, 2021 Miss. LEXIS 78 (Miss. Mar. 25, 2021).

5.3 Warning labels.

Chancery court properly denied a cosmetic manufacturer's motion for summary judgment in the State's action to require the manufacturer to establish an ovarian cancer warning on its talc cosmetic products under the Mississippi Consumer Protection Act because the chancellor was not bound by federal court or the Commission's interpretation of the federal act, but, instead, was to be "guided' by such interpretations, and the State's claim was not expressly or impliedly preempted under federal law, where the FDA chose not to exercise its regulatory authority, and allowed the states the freedom to regulate cosmetics instead. Johnson & Johnson v. Fitch, — So. 3d —, 2021 Miss. LEXIS 87 (Miss. Apr. 1, 2021).

§ 75-24-9. Injunction to restrain or prevent violation.

JUDICIAL DECISIONS

3. Injunctive relief.

Chancery court properly denied a student loan servicer's motion to dismiss for failure to state a claim because the State alleged facts that supported the danger of a present or future unfair trade practice warranting injunctive relief to protect the public's interest; the servicer had suffered no consequences, and it remained active in its practice with infinitely more potential to reenter the business of loan origination. Navient Corp. v. State ex rel. Fitch, — So. 3d —, 2021 Miss. LEXIS 78 (Miss. Mar. 25, 2021).

TITLE 89.
REAL AND PERSONAL PROPERTY

CHAPTER 1.
LAND AND CONVEYANCES

IN GENERAL

§ 89-1-5. Words of inheritance not necessary.

JUDICIAL DECISIONS

1. In general.

Decedent devised the decedent's home and its furnishings to the decedent's surviving spouse in fee simple and not as a life estate with the remainder to the decedent's nephew because reading the subject provision in the context of the entire will showed that the decedent intended that the spouse inherit the property covered by the provision in fee simple. The plainly stated fee-simple estate devised to the spouse was not diminished by the subsequent confusing alternative devise of a life estate to the spouse with remainder to the nephew. Kendrick v. Warren, 309 So. 3d 122, 2020 Miss. App. LEXIS 673 (Miss. Ct. App. 2020).

REAL ESTATE TRANSFER DISCLOSURE REQUIREMENTS

§ 89-1-505. Limit on duties and liabilities with respect to information required or delivered.

JUDICIAL DECISIONS

2. Personal knowledge.

Sellers did not get to avail themselves of the protections in the statutes because the information and subject of their omissions were within their personal knowledge. Lewis v. Rula, 293 So. 3d 317, 2020 Miss. App. LEXIS 86 (Miss. Ct. App. 2020).

TITLE 91.

TRUSTS AND ESTATES

CHAPTER 5.

WILLS AND TESTAMENTS

§ 91-5-1. Who may execute; signature; attestation.

JUDICIAL DECISIONS

15. Attestation.

16. —Validity; particular circumstances.

Trial court erred by finding in a motion for summary judgment that a purported holographic will of the decedent and a subsequent typewritten will of the decedent were not to be probated because the proponent of the wills created a genuine issue as to whether the wills had been signed and executed by the decedent through the statement by the proponent's former spouse in an affidavit that the spouse had witnessed the decedent sign the wills. Although the proponent was a named beneficiary in the wills, the spouse was not a named beneficiary. Yoakum v. Smith (In re Estate of Yoakum), 311 So. 3d 686, 2021 Miss. App. LEXIS 67 (Miss. Ct. App. 2021).

§ 91-5-9. Devise to witness void.

JUDICIAL DECISIONS

1. In general.

Trial court erred by finding in a motion for summary judgment that a purported holographic will of the decedent and a subsequent typewritten will of the decedent were not to be probated because the proponent of the wills created a genuine issue as to whether the wills had been signed and executed by the decedent through the statement by the proponent's former spouse in an affidavit that the spouse had witnessed the decedent sign the wills. Although the proponent was a named beneficiary in the wills, the spouse was not a named beneficiary. Yoakum v. Smith (In re Estate of Yoakum), 311 So. 3d 686, 2021 Miss. App. LEXIS 67 (Miss. Ct. App. 2021).

CHAPTER 7.

EXECUTORS AND ADMINISTRATORS

GENERAL PROVISIONS

§ 91-7-23. Validity contested within two years.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application in general.
4. Concealed fraud.

1. Construction and application in general.

Trial court did not err in dismissing the will contest as the two-year statute of limitations had run and the will contest was procedurally

barred because the two-year limitations period began running in the current case on April 30, 2015, when the chancellor ordered that the decedent's 2013 will be admitted to probate; and there was nothing in the record to suggest that the 2013 will admitted to probate, whether the chancellor saw a copy or not, was anything other than the decedent's 2013 will, the original of which was later filed. Boyd v. Smith (In re Will of Ratcliff), — So. 3d —, 2021 Miss. LEXIS 112 (Miss. Apr. 29, 2021).

4. Concealed fraud.

Although appellant claimed that the executor's actions constituted concealed fraud, because the will was admitted to probate in common form, and appellant was not a party, the only duties of the executor were to notify the parties named in the will and give 90 day notice to creditors, both of which were done; thus, the rule of concealed fraud did not apply. Peyton v. Longo (In re Estate of Davis), — So. 3d —, 2021 Miss. App. LEXIS 157 (Miss. Ct. App. Apr. 13, 2021).

§ 91-7-233. What actions survive to executor or administrator.

JUDICIAL DECISIONS

1. In general.

Administrator of decedent's estate stood in decedent's shoes and could prosecute any action that decedent could have prosecuted; therefore, decedent's arbitration agreement was binding on the administrator to the same extent that it was binding on decedent. Bank of Holly Springs v. Puryear ex rel. Estate of Brown, 309 So. 3d 598, 2020 Miss. App. LEXIS 692 (Miss. Ct. App. 2020).

§ 91-7-293. Names of interested parties to be stated.

JUDICIAL DECISIONS

2. Applicability.

Because it did not appear that there were any known heirs, legatees, or devisees besides the executor, he was not required by statute to make a diligent inquiry to learn addresses. The fact that appellant and/or his daughters had filed a claim against the estate did not make them heirs, legatees, or devisees; thus, this statute did not apply. Peyton v. Longo (In re Estate of Davis), — So. 3d —, 2021 Miss. App. LEXIS 157 (Miss. Ct. App. Apr. 13, 2021).

TITLE 93.

DOMESTIC RELATIONS

CHAPTER 5.

DIVORCE AND ALIMONY

§ 93-5-1. Causes for divorce.

JUDICIAL DECISIONS

10. Cruel and inhuman treatment.

chancellor did not err in grating the wife a divorce on the ground of habitual cruel and inhuman because there was ample evidence of physical and emotional abuse by the husband that was more than mere unkindness, rudeness, or incompatibility, and material aspects of the wife's allegations were corroborated by the parties' daughter and by the husband himself. Thornton v. Thornton, — So. 3d —, 2021 Miss. App. LEXIS 72 (Miss. Ct. App. Feb. 23, 2021).

17. —Evidence.

Evidence was sufficient to support an award of divorce on the grounds of habitual cruel and inhuman treatment because three credible witnesses observed the wife's violent behavior in general and toward the husband; thus, the trial court properly denied the wife's motion to dismiss the husband's divorce complaint on the ground that the husband had shown no right to relief. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

§ 93-5-24. Types of custody awarded by court; joint custody; no presumption in favor of maternal custody; access to information pertaining to child by noncustodial parent; restrictions on custody by parent with history of perpetrating family violence; rebuttable presumption that such custody is not in the best interest of the child; factors in reaching determinations; visitation orders.

JUDICIAL DECISIONS

ANALYSIS

1. Factors affecting custody — In general.
8. —Miscellaneous.
14. Modification improper.
16. Family-violence presumption.
17. Attorneys' fees.

1. Factors affecting custody — In general.

8. —Miscellaneous.

There was no error in the chancellor's consideration of continuity of care after separation factor because the guardian ad litem's (GAL) report found that since the separation of the husband and wife, that factor no longer favored the mother; the chancellor agreed with the GAL's recommendation as to that factor and found that it was neutral. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

There was no error in the chancellor's analysis of the parenting skills factor because the husband introduced evidence of the wife's unstable behavior, violence, involuntary commitment, and the child's positive drug test, among other things. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

Chancellor made an accurate finding on the mental health factor because the chancellor addressed every issue in his final judgment and correctly took into consideration that the wife's father had sought a writ for involuntary commitment and that the wife had stayed at a behavioral-health center for eight days for treatment. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

Based on the chancellor's Albright analysis, and considering the deference that the supreme court had to show to the chancellor in the exercise of his discretion, the chancellor did not abuse his discretion in finding that the parties would share joint legal custody with the husband having physical custody of the child; the best interest and welfare of the child was applied to this custody decision. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

Because a wife contended that the chancellor did not weigh the Albright factors correctly, the supreme court reviewed the chancellor's analysis in detail to determine whether he committed manifest error. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

Because the chancellor could consider the sex of the children and parent in the analyzing the first Albright factor, the chancellor did not abuse his discretion in finding that the tender-years doctrine was inapplicable since the child was four years of age; the chancellor found that as the father of a male child, the husband was suited to care for the child. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

Chancellor did not err by awarding the father sole physical custody of the child because the chancellor possessed the discretion pursuant to this section to award joint legal custody to the parents and sole physical custody to the father and the record supported the father's contention that the issue of sole physical custody was tried by consent. Johnson v. Smith, — So. 3d —, 2021 Miss. App. LEXIS 156 (Miss. Ct. App. Apr. 13, 2021).

14. Modification improper.

Father's request for modification of custody was improperly granted as he failed to prove a material change in circumstances that adversely affected the child because, although the chancellor found that the mother did not prove her allegation of abuse, there was no evidence that the mother concocted the allegation or coached the child to make the allegation; the child disclosed to the mother that the father had abused her, and later repeated the allegation during a forensic interview; and there was no evidence that the child was adversely affected or suffered any emotional harm because the mother believed and disclosed what the child had told her. Davis v. Davis, — So. 3d —, 2021 Miss. App. LEXIS 93 (Miss. Ct. App. Feb. 22, 2021).

16. Family-violence presumption.

Supreme court found no error in the chancellor's refusal to apply the domestic-violence presumption against the husband because the wife failed to provide credible evidence establishing by a preponderance of the evidence that the husband had committed domestic violence; a domestic assault charge against the husband had been dropped, and the husband's parents testified they had witnessed the wife attacking the husband in the past and had never seen the husband reciprocate any violence. Kerr v. Kerr, — So. 3d —, 2021 Miss. LEXIS 102 (Miss. Apr. 15, 2021).

17. Attorneys' fees.

In a modification of custody case, the chancellor erred in finding that the father was entitled to an award of attorneys' fees because the mother's allegations of abuse were not completely unfounded and without a basis in fact as the child disclosed abuse both to the mother and again in her forensic interview; there was no evidence or even suggestion that the mother coached the child to make a false allegation; and the mother testified that she believed the child because she had no reason not to believe her, and nothing in the record showed that the child had any obvious or apparent reason for making a false allegation. Davis v. Davis, — So. 3d —, 2021 Miss. App. LEXIS 93 (Miss. Ct. App. Feb. 22, 2021).

CHAPTER 9.

PARENTAGE

UNIFORM LAW ON PATERNITY

§ 93-9-21. Blood tests and other tests; enforcement of order to submit; notice of witnesses testifying as to sexual intercourse with mother.

JUDICIAL DECISIONS

4. Waiver.

Husband waived the husband's right to genetic testing of the second child born to the husband's marriage, and the chancery court properly resolved the question of paternity against the husband, because, when the husband challenged the second child's paternity during the divorce proceeding and requested an order for genetic testing, the request was granted, but the husband failed to comply with the order and did not schedule, pay for as ordered, or even submit to genetic testing. Greer v. Greer, 312 So. 3d 414, 2021 Miss. App. LEXIS 98 (Miss. Ct. App. 2021).

CHAPTER 11.

ENFORCEMENT OF SUPPORT OF DEPENDENTS

IN GENERAL

§ 93-11-65. Custody and support of minor children; additional remedies; determination of emancipation; temporary support awarded pending determination of parentage; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

I. CUSTODY OF CHILDREN.

8. Modification.

Father's request for modification of custody was improperly granted as he failed to prove a material change in circumstances that adversely affected the child because, although the chancellor found that the mother did not prove her allegation of abuse, there was no evidence that the mother concocted the allegation or coached the child to make the allegation; the child disclosed to the mother that the father had abused her, and later repeated the allegation during a forensic interview; and there was no evidence that the child was adversely affected or suffered any emotional harm because the mother believed and disclosed what the child had told her. Davis v. Davis, — So. 3d —, 2021 Miss. App. LEXIS 93 (Miss. Ct. App. Feb. 22, 2021).

CHAPTER 13.

PARENTAL GUARDIANSHIP

WARDS, GENERALLY

§ 93-13-1. Parental guardianship of minor children.

JUDICIAL DECISIONS

10. Child support.

Termination of the father's child-support obligation was improper because, even though the child refused to see or speak to the father and expressed an unwillingness to have a relationship with him, the proximate cause of the erosion in the relationship lied with the father, who had abused the child and failed to take an interest in the child's life. Davis v. Henderson, — So. 3d —, 2020 Miss. App. LEXIS 699 (Miss. Ct. App. Sept. 29, 2020).

CHAPTER 15.

MISSISSIPPI TERMINATION OF PARENTAL RIGHTS LAW

§ 93-15-113. Conduct of hearing for involuntary termination of parental rights; counsel for parent.

JUDICIAL DECISIONS

2. Appointment of counsel.

In a termination of parental rights action, absent a legislative directive to assess an indigent parent's attorney's fees to Covington County, the chancery court did not abuse its legislatively conferred discretion by ordering the Mississippi Department of Child Protection Services to pay the father's attorney's fees, as the chancellor complied with this section in providing the father, an indigent parent, with appointed counsel. Miss. Dep't of Child Prot. Servs. v. Bynum, 305 So. 3d 1158, 2020 Miss. LEXIS 443 (Miss. 2020).

§ 93-15-119. Involuntary termination in chancery court for reasons of abandonment, desertion, or parental unfitness to raise the child; standard of proof.

JUDICIAL DECISIONS

II. Under Former Law.

11. Abandonment or neglect.

Chancery court properly terminated a father's parental rights as in the best interests of the child based on abandonment because, despite the fact that the father continued to pay child support, based on the father's own testimony and his almost five-year absence from the child's life, there was clear and convincing evidence that supported the chancellor's decision that reunification between the father and the child was not desirable toward obtaining a satisfactory permanency outcome. Smith v. Doe, — So. 3d —, 2021 Miss. App. LEXIS 134 (Miss. Ct. App. Mar. 30, 2021).

CHAPTER 16.

GRANDPARENTS' VISITATION RIGHTS

§ 93-16-3. Who may petition for visitation rights; when; court in which to file petition.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Attorney fees.
5. Viable relationsihp.

1. In general.

Chancery court properly dismissed a paternal grandmother's petition for visitation because she failed to satisfy the statutory requirements by failing to provide the court with evidence to show that visitation was in the child's best interest. Keasler v. Fowler, 308 So. 3d 441, 2020 Miss. App. LEXIS 654 (Miss. Ct. App. 2020).

2. Attorney fees.

Chancellor erred by ordering the grandmother to prepay the mother's attorney's fees in advance of the chancellor's hearing the grandmother's petition for visitation rights because the grandmother sought visitation after her son, the children's father, died; and subsection (1) of this statute did not provide for the award of attorney's fees before a hearing. Battise v. Aucoin, 311 So. 3d 588, 2021 Miss. LEXIS 26 (Miss. 2021).

5. Viable relationsihp.

While the chancery court erred in granting a maternal grandmother visitation—she did not establish a "viable relationship" with that child since the child was not yet one year old when her contact with the grandmother ceased—it properly granted with the parents' two oldest children and did not award excessive visitation because she had an "viable relationship" with them, the award of one weekend per month, 10 days in the summer, and no other holidays was not excessive, and, while the schedule might grant the grandmother more overnight visits than before falling out of favor with the parents, her only visitation was court-ordered. Greer v. Akers, — So. 3d —, 2021 Miss. App. LEXIS 41 (Miss. Ct. App. Jan. 26, 2021).

TITLE 95.

TORTS

CHAPTER 3.

NUISANCES

§ 95-3-29. Immunity of certain agricultural operations from nuisance actions.

JUDICIAL DECISIONS

1. In general.

Since farms had been in operation for more than one year, the chancellor was correct to apply the bar in subsection (1) to neighboring property owners' action seeking to enjoin farmers from using propane cannons to deter deer from eating their crops; the properties being farmed were agricultural operations, and the propane cannons were part of those operations because they were being used as part of the best agricultural-management practices of the farm. Briggs v. Hughes, — So. 3d —, 2021 Miss. LEXIS 116 (Miss. May 6, 2021).

Plain language makes clear the legislature in fact did intend to protect existing agricultural operations from nuisance actions based on use of new farming equipment, devices, chemicals, materials, and structures, if that use accords with best agricultural-management practices; subsection (1) does not apply to a specific agricultural "activity," it instead applies to an agricultural operation. Briggs v. Hughes, — So. 3d —, 2021 Miss. LEXIS 116 (Miss. May 6, 2021).

Because the chancellor supported his conclusion with substantial evidence, the supreme court would not disturb his finding that farmers used propane cannons in accordance with best agricultural-management practices; multiple experts in agricultural management testified they had used propane cannons as part of a pest-control plan, and the farmers provided expert testimony that their particular cannon use was consistent with best practices. Briggs v. Hughes, — So. 3d —, 2021 Miss. LEXIS 116 (Miss. May 6, 2021).

Chancellor did not err in applying the Right to Farm Act to dismiss neighboring property owners' action seeking to enjoin farmers from using propane cannons to deter deer from eating their crops because the farmers had not been charged with violating Miss. Code Ann. § 97-35-9; the chancellor pointed out there was no evidence the farmers intended to "wilfully disturb" their neighbors, and the sole claim before the chancellor was the owners' private nuisance action. Briggs v. Hughes, — So. 3d —, 2021 Miss. LEXIS 116 (Miss. May 6, 2021).

CHAPTER 5.

TRESPASS

§ 95-5-10. Cutting trees without consent of owner.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

2. Statute of limitations.

Grantor's claim for the value of the trees cut was not time-barred because the amended complaint adding the claim was filed within the three-year limitations period that began running when the timber was cut; the Mississippi catch-all limitations provision applied to the grantor's claim for actual damage for the timber cutting. Alexander v. Musgrove, 311 So. 3d 668, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. 2021).

TITLE 97.

CRIMES

CHAPTER 1.

CONSPIRACY, ACCESSORIES AND ATTEMPTS

§ 97-1-1. Conspiracy.

JUDICIAL DECISIONS

9. Evidence.

16. —Other.

In a case in which defendant was convicted of armed robbery and conspiracy after he coached a 14-year-old boy to rob a store, the verdict was not contrary to the overwhelming weight of the evidence because, prior to robbing the store, the boy and defendant planned to meet at a wooded area not far from the store after he finished the job; after he robbed the store, the boy ran to that wooded area and waited on defendant for several hours before abandoning the bag of money, ski mask, gloves, sunglasses, and rifle; an officer found those same items in that wooded area on the night of the robbery; and the boy's testimony was not so unreasonable, self contradictory or substantially impeached to warrant reversal. Pittman v. State, — So. 3d —, 2021 Miss. App. LEXIS 146 (Miss. Ct. App. Apr. 6, 2021).

§ 97-1-5. Accessories after the fact; punishment.

JUDICIAL DECISIONS

ANALYSIS

2. Evidence; generally.
3. —Sufficiency.
4. Instructions.

2. Evidence; generally.

Circuit court did not err in admitting into evidence an individual's murder conviction because the State of Mississippi used the murder conviction only to show that defendant assisted the individual when defendant handed the individual the keys to defendant's car as a way to escape after the individual shot and killed the victim. To prove that defendant was an accessory after the fact to murder, the admission of the individual's murder conviction was necessary. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

3. —Sufficiency.

Evidence supported defendant's conviction for being an accessory after the fact to a murder because eyewitnesses testified that, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Witnesses also testified that they personally knew that defendant was a member of a gang, and the State of Mississippi presented evidence of defendant's tattoos, which were known gang signs, and of defendant in a gang shirt. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

Jury's guilty verdict for accessory after the fact to murder was not contrary to the weight of the evidence because a rational juror could conclude that a murder had occurred, and defendant, knowing that a murder had occurred, thereafter knowingly assisted those responsible for the murder to escape or avoid arrest; evidence was presented that defendant assisted with concealing or disposing of physical evidence used in the crime, and he admitted that he assisted one of shooters. Thames v. State, 310 So. 3d 1163, 2021 Miss. LEXIS 17 (Miss. 2021).

4. Instructions.

Circuit court did not abuse its discretion in giving the State of Mississippi's flight instruction in defendant's trial for being an accessory after the fact to a murder and for participation in gang activity because, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the

individual defendant's car keys and the individual then escaped in defendant's car. Thus, there was clear probative value of defendant's subsequent flight from the crime scene without rendering assistance. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

CHAPTER 3.

CRIMES AGAINST THE PERSON

§ 97-3-2. Crimes of violence defined.

JUDICIAL DECISIONS

1. In general.

Even though the court found that defendant was not parole eligible because he was convicted of two crimes of violence under Miss. Code Ann. § 97-3-2(1), the State conceded that defense counsel's advice regarding parole eligibility was erroneous, as counsel stated at the plea hearing that defendant would be eligible for early release if he met certain other criteria during his incarceration, and therefore the court remanded the case to the trial court for an evidentiary hearing on the voluntariness of defendant's guilty plea. Hardison v. State, — So. 3d —, 2021 Miss. App. LEXIS 180 (Miss. Ct. App. Apr. 27, 2021).

Circuit court correctly determined that defendant was ineligible for parole because the Mississippi Supreme Court clearly resolved the exact issue presented on appeal in Fogleman v. State, 283 So. 3d 685 (Miss. 2019), defendant pled guilty to attempted murder, which was listed as a crime of violence, and whether the decision in Fogleman should be overruled was a decision reserved solely for the Supreme Court. Gava-Hudson v. State, — So. 3d —, 2021 Miss. App. LEXIS 39 (Miss. Ct. App. Jan. 26, 2021).

§ 97-3-15. Homicide; justifiable homicide; use of defensive force; duty to retreat.

JUDICIAL DECISIONS

7. Instructions; generally.

8. —Self-defense.

Trial court did not err by refusing to give a jury instruction on the castle doctrine because at no point during his three recorded statements did defendant indicate that the victim had attempted to forcibly enter his vehicle or to remove him from the vehicle, but rather stated that he voluntarily exited his vehicle after the victim approached. In addition, defendant stated that the victim did not begin acting physically aggressive until both were standing outside of the vehicle. Pulliam v. State, — So. 3d —, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. Dec. 8, 2020).

Trial court committed reversible error in denying defendant's proposed jury instructions regarding this section rather than giving the question of fact regarding the initial aggressor to the jury for their determination because defendant provided at the very least a meager evidentiary basis for the jury to consider who the initial aggressor was. Defendant was not engaged in criminal activity by asking the victim to leave his home, defendant and his son testified that the victim jumped up from his chair, and they believed he was going to attack defendant. McNeer v. State, 307 So. 3d 508, 2020 Miss. App. LEXIS 668 (Miss. Ct. App. 2020).

§ 97-3-21. Homicide; penalty for first- or second-degree murder or capital murder.

JUDICIAL DECISIONS

4. Sentencing factors.

Circuit court applied the correct legal standard and appropriately considered all of the Miller v. Alabama factors, and defendant juvenile's sentence of life without parole for murder was affirmed; substantial evidence supported the circuit court's findings, including that the crime was jointly planned and executed and there did not appear to be any coercion or peer pressure involved. While defendant made a number of efforts to rehabilitate himself while incarcerated, the circuit court found there was not enough evidence to support a weighing in favor of parole. Dotson v. State, — So. 3d —, 2021 Miss. App. LEXIS 73 (Miss. Ct. App. Feb. 23, 2021).

§ 97-3-35. Homicide; killing without malice in the heat of passion.

JUDICIAL DECISIONS

4. Self-defense.

Evidence was sufficient to overcome the presumption that defendant shot the victim in reasonable self-defense because no dispute existed that defendant shot the victim and later confessed his actions to the police, defendant admitted that he exited his vehicle because the victim's actions had angered him, a physician testified that the victim was at least three feet away when defendant shot him, and after the shooting defendant fled the crime scene. Pulliam v. State, — So. 3d —, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. Dec. 8, 2020).

§ 97-3-47. Homicide; all other killings.

JUDICIAL DECISIONS

11. Instructions; generally.

In defendant's first-degree murder trial, the circuit court did not err in refusing to limit the jury instructions to only manslaughter and justifiable homicide; there was no crime of justifiable homicide, and there was sufficient evidence presented to support the circuit court's giving of an instruction on second-degree murder and manslaughter because such were lesser offenses to first-degree murder. McDowell v. State, 311 So. 3d 1252, 2021 Miss. App. LEXIS 82 (Miss. Ct. App. 2021).

§ 97-3-53. Kidnapping; punishment.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
2. Elements of offense.

I. UNDER CURRENT LAW.

1. In general.

Failure of indictment for attempted kidnapping and attempted sexual battery to describe overt acts toward the commission of those crimes was harmless error; defendant was provided ample notice of the nature of the accusations, given the co-conspirators being listed as prosecution witnesses, the testimony given by an investigator during the preliminary hearing, and a private investigator being appointed to assist in the defense. Mitchell v. State, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

Defendant failed to preserve an objection to jury instructions, and any error was harmless; although the instructions, as the indictment, for attempted kidnapping and attempted

sexual battery failed to specify an overt act, the indictment did not deprive defendant of notice of the charges against him and the instructions, which generally tracked the indictment, did not substantially alter the essential elements of the crimes. Mitchell v. State, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

2. Elements of offense.

Reason defendant did not kidnap the victim was because of outside interference, not because defendant decided to abandon the plan, and thus the third element of the crime of attempted kidnapping was satisfied. Mitchell v. State, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

There was sufficient evidence of an overt act in furtherance of the kidnapping; in part, defendant recruited and offered to pay a team of men to carry out his plan and he had already made payments to two of the men, plus he created an elaborate and detailed plan and put much effort to ensure its success, including learning the victim's routines, driving the men to where the victim lived, and procuring the necessary tools to carry out the plan. Mitchell v. State, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

§ 97-3-79. Robbery; use of deadly weapon.

JUDICIAL DECISIONS

12. Sufficiency of evidence; generally.

There was sufficient evidence to support defendant's conviction for armed robbery, as the State produced evidence showing that defendant not only fit the physical description of the robber but also had in his possession large sums of cash, including the five fifty-dollar bills of bait money that had been taken in the bank robbery mere hours before. Barnett v. State, — So. 3d —, 2021 Miss. LEXIS 101 (Miss. Apr. 15, 2021).

§ 97-3-95. Sexual battery.

JUDICIAL DECISIONS

ANALYSIS

6. Indictment.
7. Evidence; generally; admissibility.
11. Practice and procedure; jury instructions.

6. Indictment.

Trial court did not err in allowing the State to amend defendant's indictment because the indictment fully and fairly advised him of the charges against him, as time was not an essential element of the crime of sexual battery, the amendment was to conform with the proof, namely to expand the date range of the alleged crime to January 2013, and defendant was not prejudiced. Stone v. State, — So. 3d —, 2021 Miss. App. LEXIS 177 (Miss. Ct. App. Apr. 27, 2021).

Failure of indictment for attempted kidnapping and attempted sexual battery to describe overt acts toward the commission of those crimes was harmless error; defendant was provided ample notice of the nature of the accusations, given the co-conspirators being listed as prosecution witnesses, the testimony given by an investigator during the preliminary hearing, and a private investigator being appointed to assist in the defense. Mitchell v. State, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

7. Evidence; generally; admissibility.

Admission of a photograph of the victim's cervical injuries was not an abuse of discretion, as, among other things, it aided the State in proving sexual penetration, an essential element of sexual battery. Bliss v. State, — So. 3d —, 2021 Miss. App. LEXIS 80 (Miss. Ct. App. Feb. 22, 2021).

11. Practice and procedure; jury instructions.

Defendant failed to preserve an objection to jury instructions, and any error was harmless; although the instructions, as the indictment, for attempted kidnapping and attempted sexual battery failed to specify an overt act, the indictment did not deprive defendant of notice of the charges against him and the instructions, which generally tracked the indictment, did not substantially alter the essential elements of the crimes. Mitchell v. State, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

CHAPTER 5.

OFFENSES AFFECTING CHILDREN

§ 97-5-39. Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

4. Evidence.

Sufficient evidence was presented to support defendant's conviction for felony starvation of a minor child because, according to defendant's own statements to investigators, defendant was responsible for feeding the undernourished child of defendant's paramour from when defendant, the paramour, and the child began living together and reasonable minds could have concluded that the child's malnourishment continued and worsened while under defendant's care. Hampton v. State, 309 So. 3d 1055, 2021 Miss. LEXIS 3 (Miss. 2021).

Insufficient evidence was presented to support defendant's felonious burning of a minor child conviction because the State of Mississippi failed to prove that defendant intentionally, knowingly, or recklessly caused the burns to the body of the child of defendant's paramour, either as a principal or an accomplice. That defendant failed to seek medical care and offered no explanation for what occurred in defendant's household was not proof or evidence that defendant or anyone else knowingly or recklessly caused the child's burn injury. Hampton v. State, 309 So. 3d 1055, 2021 Miss. LEXIS 3 (Miss. 2021).

CHAPTER 9.

OFFENSES AFFECTING ADMINISTRATION OF JUSTICE

ARTICLE 1.

IN GENERAL.

§ 97-9-72. Fleeing or eluding a law enforcement officer in a motor vehicle; felonies; sanctions; defenses.

JUDICIAL DECISIONS

ANALYSIS

3. Indictment.
5. Sentence.

3. Indictment.

Evidence was sufficient to support defendant's conviction of felony evasion because there was undisputed evidence that when the officer activated his lights and siren defendant was given a signal to stop, defendant willfully failed to obey the officer's direction to stop and sped away, and when the officer witnessed two undisputed traffic violations—speeding and failure to display a license—he was acting in the lawful performance of his duty and with reasonable suspicion to believe that defendant had committed a crime. Fogleman v. State, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

Evidence was sufficient to show that a victim suffered serious bodily injury because she testified to suffering from a permanent injury as a result of the collision for which she still experienced physical symptoms and for which she had to use prescription medication. Fogleman v. State, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

5. Sentence.

Jury was properly instructed on the element

of serious bodily injury because the jury had clearly been properly instructed on the requisite elements of the crime including the element of "serious bodily injury," in one instruction and they were also given a definition of that term in another instruction. Fogleman v. State, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

§ 97-9-73. Resisting or obstructing arrest; fleeing or eluding law enforcement officer in motor vehicle.

JUDICIAL DECISIONS

1. In general.

Evidence was sufficient to support defendant's conviction of resisting arrest because his arrest was lawful, he refused to place his hands behind his back and the officers had to physically move his hands in order to handcuff him, and an officer testified that there was a brief struggle before defendant was placed in the patrol car. Sims v. State, — So. 3d —, 2021 Miss. App. LEXIS 197 (Miss. Ct. App. May 4, 2021).

ARTICLE 3.

OBSTRUCTION OF JUSTICE.

§ 97-9-113. Intimidating a witness.

JUDICIAL DECISIONS

1. Evidence.

Conviction for intimidating a witness had to be reversed because there was no proof of intimidation, threats, harassment, or that defendant instructed the witness to give false statements, as the witness's testimony was that defendant did not pressure her to give false testimony and told the witness to tell the truth. Rainey v. State, — So. 3d —, 2021 Miss. App. LEXIS 115 (Miss. Ct. App. Mar. 16, 2021).

3. Constitutionality.

Because defendant's speech, talking to witness to find out what the witness told police, could constitute prosecutable speech under this section, the appellate court could not hold this section as applied to the facts violated defendant's First Amendment free-speech right. Rainey v. State, — So. 3d —, 2021 Miss. App. LEXIS 115 (Miss. Ct. App. Mar. 16, 2021).

CHAPTER 17.

CRIMES AGAINST PROPERTY

IN GENERAL

§ 97-17-23. Burglary; breaking and entering inhabited dwelling; home invasion.

JUDICIAL DECISIONS

2. Sufficiency of evidence.

Evidence was sufficient to sustain defendant's burglary conviction because a rational trier of fact could have found the "breaking" element was proved beyond a reasonable doubt because testimony showed the door was closed and there was also evidence of a forced entry; the victim testified that he got out of his truck, walked to the door, and opened it, he then saw defendant standing in the doorway with a shotgun pointed at his face, and he also testified he normally locked his door, and denied leaving

the door "wide open."McLain v. State, — So. 3d —, 2021 Miss. App. LEXIS 182 (Miss. Ct. App. Apr. 27, 2021).

§ 97-17-33. Burglary; breaking and entering building other than dwelling; railroad car; vessels; automobiles.

JUDICIAL DECISIONS

6. Evidence, generally.

7. —Of breaking and entering.

Evidence was sufficient to support defendant's conviction of burglary of a dwelling because it showed that the air conditioning unit had been moved, the jewelry kept close to it was missing, defendant admitted to reaching in the window and taking the jewelry, and stolen jewelry was recovered from defendant. Benthall v. State, 311 So. 3d 697, 2021 Miss. App. LEXIS 69 (Miss. Ct. App. 2021).

CHAPTER 23.

OFFENSES AFFECTING TRADE, BUSINESS AND PROFESSIONS

§ 97-23-19. Embezzlement; by agents, bailees, trustees, servants and persons generally.

JUDICIAL DECISIONS

ANALYSIS

5. Proof.
7. Sentencing.

5. Proof.

State of Mississippi presented sufficient evidence to find defendant guilty of embezzling over time an amount in excess of $25,000 because the evidence and testimony showed that defendant wrongfully converted the funds of defendant's employer to defendant's own use, that the funds were entrusted to defendant by the nature of defendant's position at the employer, and that defendant's employer paid the amount of the express checks that were issued and cashed by defendant as a result of defendant's false repair orders for the employer's trucks. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

7. Sentencing.

Following defendant's conviction for embezzling an amount in excess of $25,000, the trial court did not abuse its discretion by sentencing defendant to serve 20 years in the custody of the Mississippi Department of Corrections and by ordering defendant to pay restitution because the term of the sentence which the court imposed was within the statutorily prescribed limits and the evidence supported the amount of the award of restitution for the funds which defendant embezzled from defendant's employer. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

§ 97-23-89. Sale, distribution of recordings without display of required information.

JUDICIAL DECISIONS

2. Sufficient evidence.

Evidence was sufficient to support defendant's conviction under this section because the investigator testified that when he entered defendant's store he observed in plain sight several CDs and/or DVDs for sale, and in addition to noticeable issues associated with the recordings' packaging and artwork, the investigator

explained that he identified the recordings as counterfeit because they failed to display the manufacturer's actual name and street address as required. Murshid v. State, — So. 3d —, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. Apr. 20, 2021).

CHAPTER 33.

GAMBLING AND LOTTERIES

IN GENERAL

§ 97-33-1. Betting, gaming or wagering; exception from prohibition; penalty.

JUDICIAL DECISIONS

6. Site proposal.

Denial of a gaming site application was proper after the Mississippi Gaming Commission (MGC) found that applicant's proposed gaming site failed to meet the governing statutory and regulatory requirements under Miss. Code Ann. § 97-33-1 (Rev. 2014) in the first instance and 13 Mississippi Administrative Code Part 2, Rule 1.4(d) in the second. RW Dev., LLC v. Miss. Gaming Comm'n, 307 So. 3d 404, 2020 Miss. LEXIS 485 (Miss. 2020).

CHAPTER 35.

CRIMES AGAINST PUBLIC PEACE AND SAFETY

§ 97-35-7. Disorderly conduct; failure to comply with requests or commands of law enforcement officers; penalties; exception.

JUDICIAL DECISIONS

2. Sufficiency of evidence.

Evidence was sufficient to support defendant's conviction of disorderly conduct because both officers testified that they repeatedly asked defendant to remove his hands from his pockets and he refused each time, and they testified that defendant was irate and cursing at them with people in the surrounding area. Sims v. State, — So. 3d —, 2021 Miss. App. LEXIS 197 (Miss. Ct. App. May 4, 2021).

Evidence was sufficient to support defendant's conviction of disorderly conduct because the video and the officer's testimony showed that defendant intended to breach the peace by refusing the officer's lawful orders to stand and enter the holding cell. Johnson v. State, — So. 3d —, 2021 Miss. App. LEXIS 144 (Miss. Ct. App. Mar. 30, 2021).

§ 97-35-9. Disturbance by explosions, noises or offensive conduct.

JUDICIAL DECISIONS

1. In general.

Chancellor did not err in applying the Right to Farm Act to dismiss neighboring property owners' action seeking to enjoin farmers from using propane cannons to deter deer from eating their crops because the farmers had not been charged with violating Miss. Code Ann. § 97-35-9; the chancellor pointed out there was

no evidence the farmers intended to "wilfully disturb" their neighbors, and the sole claim before the chancellor was the owners' private nuisance action. Briggs v. Hughes, — So. 3d —, 2021 Miss. LEXIS 116 (Miss. May 6, 2021).

CHAPTER 37.

WEAPONS AND EXPLOSIVES

GENERAL PROVISIONS

§ 97-37-5. Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions [Effective until July 1, 2021].

JUDICIAL DECISIONS

9. Sufficient evidence.

Sufficiency and weight of the evidence supported defendant's conviction for possession of a weapon by a felon because, on top of defendant's many admissions to possessing the charged gun, a witness gave eyewitness testimony that she saw defendant with the black and brown pistol; he pointed the pistol at her and, after sexually assaulting her, left the gun with her; in text messages between them, defendant mentioned the pistol he loaned the victim; and he made repeated pleas to get the gun back. Williams v. State, 305 So. 3d 1122, 2020 Miss. LEXIS 445 (Miss. 2020).

Evidence was sufficient to convict defendant of possession of a weapon by a convicted felon because defendant had the opportunity and motive to dispose of the weapon; the residents of the premises denied ownership of the weapon; and an additional handgun magazine was found next to defendant at the time of his arrest, and the additional handgun magazine fit the recovered pistol. Kelly v. State, 305 So. 3d 1134, 2020 Miss. LEXIS 444 (Miss. 2020).

§ 97-37-29. Shooting into dwelling house.

JUDICIAL DECISIONS

2. Sentence proper.

Circuit court acted appropriately in sentencing defendant to a term of ten years in custody with four years suspended, following defendant's conviction for shooting into a dwelling house, because the sentence did not exceed the maximum statutory penalty, and, although defendant was placed on five years of supervised probation, those years were not included in the calculation of the sentence. Dorsey v. State, 310 So. 3d 1238, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. 2021).

§ 97-37-37. Enhanced penalty for use of firearm during commission of felony.

JUDICIAL DECISIONS

2. Double jeopardy.

Defendant's aggravated assault conviction and firearm enhancement sentence did not violate double jeopardy because sentence enhancements did not set out separate elements of the underlying felony. Green v. State, 312 So. 3d 1214, 2021 Miss. App. LEXIS 102 (Miss. Ct. App. 2021).

CHAPTER 44.
MISSISSIPPI STREETGANG ACT

§ 97-44-3. Definitions.

JUDICIAL DECISIONS

1. Jury instructions.

Circuit court did not err in defendant's trial for participation in gang activity by failing to instruct the jury on the statutory definitions obtained in the Mississippi Streetgang Act, Miss. Code Ann. § 97-44-1 et seq., because there was no requirement that the Mississippi Streetgang Act's definitions were to be incorporated into jury instructions. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

§ 97-44-19. Penalties for criminal street gang activity.

JUDICIAL DECISIONS

ANALYSIS

1. Jury instructions.
3. Evidence sufficient.

1. Jury instructions.

Circuit court did not abuse its discretion in giving the State of Mississippi's flight instruction in defendant's trial for being an accessory after the fact to a murder and for participation in gang activity because, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Thus, there was clear probative value of defendant's subsequent flight from the crime scene without rendering assistance. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

Circuit court did not err in defendant's trial for participation in gang activity by failing to instruct the jury on the statutory definitions obtained in the Mississippi Streetgang Act, Miss. Code Ann. § 97-44-1 et seq., because there was no requirement that the Mississippi Streetgang Act's definitions were to be incorporated into jury instructions. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

3. Evidence sufficient.

Evidence supported defendant's conviction for participation in gang activity because eyewitnesses testified that, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Witnesses also testified that they personally knew that defendant was a member of a gang, and the State of Mississippi presented evidence of defendant's tattoos, which were known gang signs, and of defendant in a gang shirt. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

TITLE 99.
CRIMINAL PROCEDURE

CHAPTER 1.
GENERAL PROVISIONS; TIME LIMITATIONS; COSTS

§ 99-1-5. Time limitation on prosecutions.

JUDICIAL DECISIONS

4. Miscellaneous.

Trial court did not err by denying defendant's motion to dismiss because the State commenced his prosecution within the time period provided by this section, as the search warrants and defendant's arrest warrant were executed on July 9, 2015 and a grand jury indicted defendant on July 28, 2016. Defendant's 2019 reindictment was not untimely because it contained charges almost identical to those in the 2016 indictment except for one count's amendment to reflect the specific amount of synthetic cannabinoids seized from defendant's store. Murshid v. State, — So. 3d —, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. Apr. 20, 2021).

§ 99-1-7. Time limitation on prosecutions; commencement of prosecution.

JUDICIAL DECISIONS

1. In general.

Trial court did not err by denying defendant's motion to dismiss because the State commenced his prosecution within the time period provided by this section, as the search warrants and defendant's arrest warrant were executed on July 9, 2015 and a grand jury indicted defendant on July 28, 2016. Defendant's 2019 reindictment was not untimely because it contained charges almost identical to those in the 2016 indictment except for one count's amendment to reflect the specific amount of synthetic cannabinoids seized from defendant's store. Murshid v. State, — So. 3d —, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. Apr. 20, 2021).

Trial court properly dismissed a father's malicious-prosecution claim because none of the evidence he submitted amounted to the commencement of a criminal proceeding; while the trial court used a statutory definition to define the initiation of a criminal proceeding, there was no error because such finding was supported by caselaw. Wilbourn v. Wilbourn, — So. 3d —, 2021 Miss. LEXIS 16 (Miss. Feb. 4, 2021).

CHAPTER 11.
JURISDICTION AND VENUE

§ 99-11-3. Local jurisdiction; venue; venue regarding indictments returned by state grand jury [Subsection (2) repealed effective July 1, 2024].

JUDICIAL DECISIONS

2. Proof of venue, generally.

Trial court did not err in submitting the issue of venue to the jury. Because there was conflicting testimony regarding the identity of the county in which an assault occurred, ambiguity existed, making it appropriate for the jury to

determine venue. Kidder v. State, — So. 3d —, 2021 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 20, 2021).

CHAPTER 13.

INSANITY PROCEEDINGS

§ 99-13-11. Mental examination of person charged with felony; cost.

JUDICIAL DECISIONS

2. Grounds for appointment of examiner.

Although the trial court initially found that defendant was incompetent to stand trial, following a second competency hearing, the court found that defendant was competent to stand trial after receiving treatment. Furthermore, after defendant withdrew an insanity defense, there was no evidence or reasonable grounds that the court should have sua sponte ordered a competency hearing on the first day of trial based on defendant's demeanor at trial as defendant actively participated in the proceedings and engaged in discussions with defendant's counsel. Dorsey v. State, 310 So. 3d 1238, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. 2021).

CHAPTER 17.

TRIAL

§ 99-17-1. Indictments to be tried within 270 days of arraignment.

JUDICIAL DECISIONS

17. Arraignment.

Defendant's statutory right to a speedy trial was not violated because his trial began 253 days after he was arraigned. Golden v. State, — So. 3d —, 2021 Miss. App. LEXIS 153 (Miss. Ct. App. Apr. 13, 2021).

§ 99-17-9. Trial in the absence of accused.

JUDICIAL DECISIONS

5. Particular circumstances.

Trial court did not abuse its discretion by denying defendant's motion for a continuance and proceeding in absentia because the record was clear that defendant was aware of he trial date, made preparations for trial, and failed to explain her absence to her attorney of the trial court. Benthall v. State, 311 So. 3d 697, 2021 Miss. App. LEXIS 69 (Miss. Ct. App. 2021).

CHAPTER 19.

JUDGMENT, SENTENCE, AND EXECUTION

SENTENCING OF HABITUAL CRIMINALS

§ 99-19-81. Sentencing of habitual criminals to maximum term of imprisonment.

JUDICIAL DECISIONS

18. Sentence not excessive.

Defendant's concurrent and consecutive maximum enhanced sentences for possession of schedule I and II controlled substances with intent to sell, conspiracy to sell a schedule I controlled substance, and possession of a firearm by a felon were not grossly excessive and disproportionate to the crimes because defendant was adjudicated a non-violent habitual offender due to defendant's prior conviction for possession of marijuana and the circuit court did not abuse its discretion by applying the subsequent drug offender enhancement. Williams v. State, — So. 3d —, 2021 Miss. App. LEXIS 194 (Miss. Ct. App. May 4, 2021).

§ 99-19-83. Sentencing of habitual criminals to life imprisonment.

JUDICIAL DECISIONS

16. Particular circumstances.

In a case in which defendant was found guilty of possession of marijuana in an amount greater than 30 grams but less than 250 grams, the circuit court justifiably found defendant to be a violent habitual offender under Miss. Code Ann. § 99-19-83 and sentenced him to life imprisonment without eligibility for probation or parole. Because defendant failed to prove the threshold requirement of gross disproportionality, and because his habitual-offender sentence fell within the statutory guidelines, his sentence constituted a constitutionally permissible punishment for his most recent crime. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 206 (Miss. Ct. App. May 11, 2021).

CHAPTER 37.

RESTITUTION TO VICTIMS OF CRIMES

§ 99-37-3. Imposition and amount of restitution.

JUDICIAL DECISIONS

2. Illustrative cases.

Following defendant's conviction for embezzling an amount in excess of $25,000, the trial court did not abuse its discretion by sentencing defendant to serve 20 years in the custody of the Mississippi Department of Corrections and by ordering defendant to pay restitution because the term of the sentence which the court imposed was within the statutorily prescribed limits and the evidence supported the amount of the award of restitution for the funds which defendant embezzled from defendant's employer. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

CHAPTER 39.

POST-CONVICTION PROCEEDINGS

ARTICLE 1.

MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT.

§ 99-39-5. Grounds for relief; time limitations; "biological evidence" defined.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
5. Ineffective assistance of counsel.
7. Newly discovered evidence.
11. Timeliness.

1. In general.

Because petitioner appealed his conviction, he had to petition the Mississippi Supreme Court for leave to file a postconviction relief motion, which action had be taken within three years of the final decision on petitioner's appeal. Mosley v. State, 307 So. 3d 1261, 2020 Miss. App. LEXIS 678 (Miss. Ct. App. 2020).

5. Ineffective assistance of counsel.

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his Appellant's ineffective assistance of counsel claim on the ground that counsel failed to object to his sentence was without merit; appellant was not prejudiced by the circuit court's imposing a more lenient sentence for his conviction for possession of a controlled substance while incarcerated, and appellant's ineffective assistance of counsel allegations were supported only by his own affidavit. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

7. Newly discovered evidence.

Appellant's post-conviction collateral relief motion was procedurally barred as a successive motion with no exceptions because his due process rights were not violated by not being able to confront a witness based on "new evidence" in an unsworn affidavit from a minor child; the information contained in the affidavit was speculative at best, the statements were not sworn to, and appellant had called several witnesses but failed to call the child when he had an opportunity to do so. Britton v. State, — So. 3d —, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. Mar. 23, 2021).

11. Timeliness.

Because the mandate in petitioner's direct appeal issued in 1999, unless Unless excepted, his petition was barred as untimely; because petitioner presented no "arguable basis" for his claims, his application for leave to proceed in the trial court was denied. Anderson v. State, — So. 3d —, 2021 Miss. LEXIS 77 (Miss. Mar. 19, 2021).

Appellant's post-conviction relief (PCR) motion was time-barred because the circuit court sentenced him on July 2, 2012, and the circuit court's sentencing order was entered on that same day, but appellant filed his PCR motion on July 26, 2019, over four years too late. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because even if his sentence for possession of a controlled substance in a correctional facility was "illegal" in any way, he failed to demonstrate that his fundamental rights were violated by the circuit court's imposition of that sentence; given the sentence's more lenient terms, appellant did not suffer any fundamental unfairness from the illegal sentence, nor were his fundamental rights violated. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his sentence for possession of a controlled substance while incarcerated was plainly more lenient than what a legal sentence would have been, and thus, any purported error on the circuit court's part in imposing appellant's sentence was harmless. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

In an action for post-conviction relief, appellant failed to offer any evidence to substantiate any extraordinary circumstance that would explain his failure to assert his claims within the statutory three-year time limitation or to overcome the successive-writ bar and thus, the trial court did not abuse its discretion in denying appellant's post-conviction relief motion. Figueroa v. State, — So. 3d —, 2020 Miss. App. LEXIS 642 (Miss. Ct. App. Nov. 24, 2020).

§ 99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.

JUDICIAL DECISIONS

1. In general.

Because petitioner appealed his conviction, he had to petition the Mississippi Supreme Court for leave to file a postconviction relief motion, which action had be taken within three years of the final decision on petitioner's appeal. Mosley v. State, 307 So. 3d 1261, 2020 Miss. App. LEXIS 678 (Miss. Ct. App. 2020).

§ 99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.

JUDICIAL DECISIONS

6. Evidentiary hearing.

Allegedly undisclosed information was not exculpatory in the sense that it did not provide evidence that defendant was actually innocent but only that a possible Miranda violation would have supported a motion to suppress defendant's confession; by entering her guilty plea, petitioner waived her claim of a Brady violation and no hearing was required on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

§ 99-39-21. Procedural waiver of objections, defenses, claims; collateral estoppel; res judicata; burden of proof.

JUDICIAL DECISIONS

6. Res judicata.

In petitioner's death penalty case, his intellectual-disability claim was barred because he did not demonstrate a novel claim or a sudden reversal of law relative to the issue that would exempt it from the procedural bar of res judicata; petitioner's request for leave to proceed in the trial court with the intellectual-disability claim was not well-taken because he failed to present a substantial showing of the denial of a state or federal right. Dickerson v. State, — So. 3d —, 2021 Miss. LEXIS 92 (Miss. Apr. 8, 2021).

§ 99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
8. Successive writ.

1. In general.

Although the underlying physical evidence, the medical and autopsy records, remained the same, changes in experts' scientific understand-

ing on issues such as bitemark analysis and shaken baby syndrome might constitute newly discovered evidence, excepting such claims from procedural bars of the Uniform Post-Conviction Collateral Relief Act; the court reversed and remanded for the trial court to conduct an evidentiary hearing and allow petitioner to provide expert testimony on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

Video evidence containing the alleged Miranda violation was not of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence; therefore, the court found no additional exception to the procedural bars based upon the discovery of the videotape by postconviction relief counsel. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

8. Successive writ.

Appellant's post-conviction collateral relief (PCR) motion was procedurally barred as a successive motion because appellant's second PCR motion challenged similar issues that he raised in his first PCR motion. Britton v. State, — So. 3d —, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. Mar. 23, 2021).

§ 99-39-27. Application to Supreme Court for leave to proceed in trial court; grant of relief; dismissal or denial as res judicata.

JUDICIAL DECISIONS

4. Successive petitions.

Because petitioner presented no "arguable basis" for his claims, his application for leave to proceed in the trial court was denied; petitioner filed numerous prior petitions for post-conviction relief, which had been rejected, and thus, his petition was successive. Anderson v. State, — So. 3d —, 2021 Miss. LEXIS 77 (Miss. Mar. 19, 2021).